

FINAL PRIVATE LETTER RULING

REQUEST LETTER

16-002

May 10, 2016

Office of the Commission
Utah State Tax Commission
210 N 1950 W
Salt Lake City, UT 84134

Taxpayer's Name: COMPANY 1
Taxpayer's Address: ADDRESS 1
CITY STATE ZIP
Federal Taxpayer Identification Number: XX-XXXXXXX

Dear Commissioners:

Please accept this correspondence as COMPANY 1's (hereinafter "COMPANY 1") Request for a Letter Ruling. Specifically, COMPANY 1 is seeking a ruling pertaining to the application of Sales tax and Multi-Channel Audio and Video Service tax to the services discussed below.

BACKGROUND

By way of background, COMPANY 1 provides movies, games, satellite television programming and Internet services to various hospitality facilities throughout the United States, including the State of Utah. In the hospitality industry, all pay-per-view/pay-per-use services; e.g., movies, games, music, etc., are purchased by the guests at the lodging facility. Subsequently, upon receipt of payment from the hotel guest(s), COMPANY 1, on a monthly basis, invoices each hotel for the pay-per-view/pay-per-use services purchased. Hotel personnel are also expected to collect the appropriate and applicable taxes from each guest. In the healthcare industry, all content is paid for by the healthcare provider (hospital). Healthcare patients are not separately charged a fee for the services they utilize.

Pay-Per-View/Pay-Per-Use Service

The pay-per-view services are provided by means of a head-end based system in the hotel, consisting of a central control unit linked by coaxial cable to the television set in the hotel room and utilizing the hotel-owned master antenna television distribution system or cable plant. The head-end system contains a cabinet of computers and other electronic equipment.

The taxable transaction in question begins when the hotel guest selects a pay-per view/pay-per-use service from a menu of available options, which are displayed on the guest room television, receiver or monitor. The guest makes his or her selection by using the television remote control. The pay-per-view/pay-per-use service is delivered to the appropriate guest room television via the coaxial cable owned by the hotel.

The taxable transaction is completed at the time the hotel guest checks out of the hotel room and satisfies the bill for the use of the hotel room and any pay-per-view/pay-per-use service utilized during that guest's stay at the hotel. COMPANY 1 then bills the hotel on a monthly basis for the services accessed by its guests during the previous month.

Issue #1: Which Utah taxes apply to the pay-per-view services? Sales tax, Multi-Channel Audio and Video Service tax, none or both.

Issue #2: In regard to the pay-per-view services, which party is expected to be the ultimate taxpayer or, the party responsible for the remittance of the taxes due and owing to the state, COMPANY 1 or the lodging facility?

Free-To-Guest Services.

Through a business relationship with COMPANY 2, COMPANY 1 may provide various channels of satellite television programming (e.g., ESPN, TBS, HBO, Fox News) which are delivered to the hotel or healthcare provider by satellite and is free to the hotel guests and hospital patients. For this free-to-guest satellite service, the hotel or hospital pays a specific monthly rate per room, at no additional charge to the hotel guests or hospital patients. This service is considered, by COMPANY 1, as direct-to-home (DTH) satellite programming. None of the satellite television programming is ever consumed by COMPANY 1.

Issue #3: COMPANY 1 is not the end user subscriber of the direct broadcast satellite service. COMPANY 2 provides the satellite service to COMPANY 1 who further distributes the satellite service to our hospitality and healthcare customers. COMPANY 1 has provided COMPANY 2 with a Utah sales tax resale certificate.

Are the wholesale sales of direct broadcast satellite service from COMPANY 2 to COMPANY 1 subject to either sales tax or the Multi-Channel Audio and Video Service tax?

Are the retail sales of direct broadcast satellite service from COMPANY 1 to our hospitality and healthcare customers subject to either sales tax or the Multi-Channel Audio and Video Service tax?

COMPANY 1 looks forward to your response regarding the aforementioned issues. If, at any time, you would like to discuss these issues in greater detail, please do not hesitate to contact me at PHONE NUMBER 1. Again, I look forward to your response.

Best regards.

Sincerely,

NAME 1,
TITLE 1
COMPANY 1

RESPONSE LETTER
PRIVATE LETTER RULING 16-002

August 9, 2017

NAME 1, CPA
 TITLE 1
 EMAIL 1
 COMPANY 1
 ADDRESS 1
 CITY STATE ZIP

Dear Mr. NAME 1:

This letter is in response to your request for a private letter ruling for COMPANY 1 (“Company”), which sells pay-per-view music, pay-per-view movies, and multi-channel video services to hotels and hospitals. Through a telephone call, you explained that you did not need a ruling on the games; thus, this private letter ruling does not address that product.

Below is a table of your issues and our conclusions:

<u>Three Issues as You Stated Them</u>	<u>Answers</u>
<p><u>Issue #1:</u> Which Utah taxes apply to the pay-per-view services? Sales tax, Multi-Channel Audio and Video Service tax, none or both.</p>	<p><u>Answer #1:</u> For the pay-per-view movie and music services <i>sold by the Company to the hotels and hospitals</i>, the multi-channel video or audio service tax applies. Utah sales taxes do not apply.</p>
<p><u>Issue #2:</u> In regard to the pay-per-view services, which party is expected to be the ultimate taxpayer or, the party responsible for the remittance of the taxes due and owing to the state, [the Company] or the lodging facility?</p>	<p><u>Answer #2:</u> For the pay-per-view movie and music services <i>sold by the Company to the hotel or other lodging facility</i>, the Company is responsible for the remittance of the multi-channel video or audio service tax.</p> <p>The related pay-per-view movie and music services <i>sold by the hotel or other lodging facility to a guest</i> are user fees, which are generally subject to Utah sales</p>

	<p>and use taxes under § 59-12-103(1)(f). However, based on the facts presented, the hotel’s or other lodging facility’s sales of these services meet the sales tax exemption found in § 59-12-104(40) for “sales or rentals of the right to use or operate for amusement, entertainment, or recreation an unassisted amusement device . . .” Thus, the hotel or other lodging facility does not have a remittance responsibility to the state for these transactions.</p>
<p>Issue #3: [The Company] is not the end user subscriber of the direct broadcast satellite service. COMPANY 2 provides the satellite service to [the Company] who further distributes the satellite service to our hospitality and healthcare customers. [The Company] has provided COMPANY 2 with a Utah sales tax resale certificate.</p> <p>Are the wholesale sales of direct broadcast satellite service from COMPANY 2 to [the Company] subject to either sales tax or the Multi-Channel Audio and Video Service tax?</p> <p>Are the retail sales of direct broadcast satellite service from [the Company] to our hospitality and healthcare customers subject to either sales tax or the Multi-Channel Audio and Video Service tax?</p>	<p>Answer #3: The wholesale sales of the direct broadcast satellite service <i>from COMPANY 2 to the Company</i> are subject to the multi-channel video or audio service tax.</p> <p>The retail sales of the direct broadcast satellite service <i>from the Company to the hotel or other lodging facility and from the Company to the hospital or other healthcare providers</i> are also subject to the multi-channel video or audio service tax.</p> <p>The sales tax exemption for a product purchased for resale, found in § 59-12-104(25), does not apply to the multi-channel video or audio service tax.</p>

I. Facts

Through your request letter, you provided us with the following facts:

[The Company] provides movies, games, satellite television programming and Internet services to various hospitality facilities throughout the United States, including the State of Utah. In the hospitality industry, all pay-per-view/pay-per-use services; e.g., movies, games, music, etc., are purchased by the guests at the

lodging facility. Subsequently, upon receipt of payment from the hotel guest(s), [the Company], on a monthly basis, invoices each hotel for the pay-per-view/pay-per-use services purchased. Hotel personnel are also expected to collect the appropriate and applicable taxes from each guest. In the healthcare industry, all content is paid for by the healthcare provider (hospital). Healthcare patients are not separately charged a fee for the services they utilize.

Pay-Per-View/Pay-Per-Use Service

The pay-per-view services are provided by means of a head-end based system in the hotel, consisting of a central control unit linked by coaxial cable to the television set in the hotel room and utilizing the hotel-owned master antenna television distribution system or cable plant. The head-end system contains a cabinet of computers and other electronic equipment.

The taxable transaction in question begins when the hotel guest selects a pay-per view/pay-per-use service from a menu of available options, which are displayed on the guest room television, receiver or monitor. The guest makes his or her selection by using the television remote control. The pay-per-view/pay-per-use service is delivered to the appropriate guest room television via the coaxial cable owned by the hotel.

The taxable transaction is completed at the time the hotel guest checks out of the hotel room and satisfies the bill for the use of the hotel room and any pay-per-view/pay-per-use service utilized during that guest's stay at the hotel. [The Company] then bills the hotel on a monthly basis for the services accessed by its guests during the previous month.

....

Through a telephone call, you explained that you did not need a ruling on the pay-per-use games because this product has "died."

Also through a telephone call, you explained for the pay-per-view movies and music, the purchase price of each pay-per-view item sold by the Company to the hotel is the same amount as the purchase price of that pay-per-view item sold by the hotel to the hotel guest. You also explained the Company currently collects and remits sales taxes on the purchase price paid by the hotel. You also explained the hotel does not currently collect and remit sales taxes on the purchase price paid by the hotel's guest to the hotel.

Through your request letter, you provided us with the following facts about the satellite television programming sold by the Company to both hotels and hospitals:

Free-To-Guest Services.

Through a business relationship with COMPANY 2, [the Company] may provide various channels of satellite television programming (e.g., ESPN, TBS,

HBO, Fox News) which are delivered to the hotel or healthcare provider by satellite and is free to the hotel guests and hospital patients. For this free-to-guest satellite service, the hotel or hospital pays a specific monthly rate per room, at no additional charge to the hotel guests or hospital patients. This service is considered, by [the Company], as direct-to-home (DTH) satellite programming. None of the satellite television programming is ever consumed by [the Company].

....
COMPANY 2 provides the satellite service to [the Company] who further distributes the satellite service to our hospitality and healthcare customers. [The Company] has provided COMPANY 2 with a Utah sales tax resale certificate. . . .

Through a telephone call, you further explained that for the channels of satellite television programming, COMPANY 2 provides the digital signal for the satellite television programming directly to the satellite receiver equipment located at the hotels and hospitals. You explained that the Company invoices the hotels and hospitals for this digital signal. You explained that the Company charges hotels and hospitals a sales price that is based on the sizes of the hotels and hospitals, and that this sales price is on rare occasions below the Company's purchase price to acquire the satellite television programming from COMPANY 2. You also discussed an additional transaction that occurs between COMPANY 2 and the Company; specifically, COMPANY 2 pays the Company a monthly commission. You also explained that COMPANY 2 currently collects and remits the multi-channel video or audio service tax for the sales of the digital signal to the Company. You explained that your primary inquiry concerns the tax treatment of these sales of satellite programming from COMPANY 2 to the Company. You also inquired whether the Company must collect and remit the multi-channel video or audio service tax for the Company's sales of the digital signal to the hotels and hospitals. You have indicated that the Company does currently collect and remit the multi-channel video or audio service tax on these sales to the hotels and hospitals.

Through a telephone call, you further explained that before 2013, the Company owned video or audio equipment in the hotels and hospitals. You explained that now, the hotels and hospitals purchase and own all of the equipment. You explained that you currently have a mix of hotel and hospital customers, for some of which the Company owns the equipment and others which own the equipment themselves.

The Company's websites include descriptions of the products or services the Company provides to hotels and hospitals. Based on these descriptions, when the hotels and hospitals own their own equipment, the Company provides a non-hardware component necessary for a hotel or hospital to have a SMATV system for their guests and patients. Through documents on its website, the Federal Communications Commission recognizes a SMATV system as follows:

A SMATV system is a video distribution system that does not use any public rights-of-way. SMATV systems serve multiple dwelling units, such as apartments and condominiums as well as hotels and office buildings, receiving programming via a satellite dish or antenna and distributing it through the building's wiring.

Cable/BRS and Cable/SMATV Cross-Ownership in *Cable Television* (Dec 15, 2015), Federal Communications Commission, at <https://www.fcc.gov/media/engineering/cable-television> (last visited February 1, 2017). *See also* Report and Order and Further Notice of Proposed Rulemaking in Docket MB No. 07-51, FCC 07-189, at 4 n.12 (October 31, 2007) available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-07-189A1.pdf (defining private cable operators as SMATV providers and as “video distribution facilities that use closed transmission paths without using any public right-of-way. . . .”)

The Company’s non-hardware component provides hotels and hospitals with the menu system used by hotel guests and hospital patients. The menu system allows hotel guests and hospital patients to access the TV channels, movies, and music discussed in this private letter ruling. The menu system, however, is not limited to providing these items. Through the menu system, hotel guests and hospital patients can also make other selections such as requesting hotel or hospital room services and viewing other information provided by the hotels or hospitals.

II. Applicable Law

A. Utah Sales and Use Taxes

Utah Code Ann. § 59-12-103(1) imposes Utah sales and use taxes as follows, in pertinent part:

A tax is imposed on the purchaser as provided in this part on the purchase price or sales price for amounts paid or charged for the following transactions:

- (a) retail sales of tangible personal property made within the state;
- (b) amounts paid for:
 - (i) telecommunications service, other than mobile telecommunications service, that originates and terminates within the boundaries of this state;
.....
 - (f) except as provided in Section 59-12-104, amounts paid or charged as admission or user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, horseback rides, sports activities, or any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity;
.....
- (m) amounts paid or charged for a sale:

- (i) (A) of a product transferred electronically; or
 - (B) of a repair or renovation of a product transferred electronically; and
- (ii) regardless of whether the sale provides:
 - (A) a right of permanent use of the product; or
 - (B) a right to use the product that is less than a permanent use, including a right:
 - (I) for a definite or specified length of time; and
 - (II) that terminates upon the occurrence of a condition.

....

Utah Code Ann. § 59-12-102 defines terms for Utah sales and use taxes as follows, in pertinent part:

- (14) "Assisted amusement device" means an amusement device, skill device, or ride device that is started and stopped by an individual:
 - (a) who is not the purchaser or renter of the right to use or operate the amusement device, skill device, or ride device; and
 - (b) at the direction of the seller of the right to use the amusement device, skill device, or ride device.

....

- (95) (a) Except as provided in Subsection (95)(b), "product transferred electronically" means a product transferred electronically that would be subject to a tax under this chapter if that product was transferred in a manner other than electronically.
- (b) "Product transferred electronically" does not include:
 - (i) an ancillary service;
 - (ii) computer software; or
 - (iii) a telecommunications service.

....

- (129) (a) "Telecommunications service" means the electronic conveyance, routing, or transmission of audio, data, video, voice, or any other information or signal to a point, or among or between points.

....

- (c) "Telecommunications service" does not include:

....

- (viii) a product transferred electronically, including:

- (A) music;
- (B) reading material;
- (C) a ring tone;
- (D) software; or
- (E) video; [or]

- (ix) a radio and television audio and video programming service:

- (A) regardless of the medium; and
- (B) including:

- (I) furnishing conveyance, routing, or transmission of a television audio and video programming service by a programming service provider;
- (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
- (III) audio and video programming services delivered by a commercial mobile radio service provider as defined in 47 C.F.R. Sec. 20.3;

....

(135) "Unassisted amusement device" means an amusement device, skill device, or ride device that is started and stopped by the purchaser or renter of the right to use or operate the amusement device, skill device, or ride device.

....

Utah Code Ann. § 59-12-104 provides the following exemptions, stating the following in pertinent part:

(25) a product purchased for resale in this state, in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product;

....

(40) (a) . . . sales or rentals of the right to use or operate for amusement, entertainment, or recreation an unassisted amusement device as defined in Section 59-12-102

....

Utah Administrative Code R865-19S-33 defines "admission" as follows in part:

(1) (a) "Admission" means the right or privilege to enter into a place. Admission includes the amount paid for the right to use a reserved seat or any seat in an auditorium, theater, circus, stadium, schoolhouse, meeting house, or gymnasium to view any type of entertainment. Admission also includes the right to use a table at a night club, hotel, or roof garden whether such charge is designated as a cover charge, minimum charge, or any such similar charge.

....

Utah Administrative Code R865-19S-108 addresses "user fees," stating the following:

- A. For purposes of administering the sales or use tax on admission or user fees provided for in Section 59-12-103, "user fees" includes charges imposed on an individual for access to the following, if that access occurs at any location other than the individual's residence:
 - 1. video or video game;

2. television program; or
 3. cable or satellite broadcast.
- B. The provisions of this rule are effective for transactions occurring on or after October 1, 1999.

Under the Utah law quoted previously, these user fees are subject to sales and use taxes under § 59-12-103(1)(f), but they can be exempt under § 59-12-104(40).

B. Multi-Channel Video or Audio Service Tax

Utah Code Ann. § 59-26-103 imposes tax under the Multi-Channel Video or Audio Service Tax Act as follows, in pertinent part:

Subject to Section 59-26-104.5, there is imposed as provided in this part a tax on the purchaser equal to 6.25% of amounts paid or charged for multi-channel video or audio service provided by a multi-channel video or audio service provider:

- (1) within the state; and
- (2) to the extent permitted by federal law.

Utah Code Ann. § 59-26-102(3) defines "multi-channel video or audio service provider" for the Utah Multi-Channel Video or Audio Service Tax Act as follows:

- (a) "Multi-channel video or audio service provider" means any person or group of persons that:
 - (i) provides multi-channel video or audio service and directly or indirectly owns a significant interest in the multi-channel video or audio service; or
 - (ii) otherwise controls or is responsible through any arrangement, the management and operation of the multi-channel video or audio service.
- (b) "Multi-channel video or audio service provider" includes the following except as specifically exempted by state or federal law:
 - (i) a cable operator;
 - (ii) a CATV provider;
 - (iii) a multi-point distribution provider;
 - (iv) a MMDS provider;
 - (v) a SMATV operator;
 - (vi) a direct-to-home satellite service provider; or
 - (vii) a DBS provider.

Utah Code Ann. § 59-26-104 imposes collection and remittance requirements on a multi-channel video or audio service provider, as follows in part:

- A multi-channel video or audio service provider shall:
- (1) collect the tax imposed by Section 59-26-103 from the purchaser;

- (2) pay the tax collected under Subsection (1) to the commission:
. . . . and
- (3) pay the tax collected under Subsection (1) using a form prescribed by the commission.

Utah Code Ann. Title 59, Chapter 26 does not list any exemptions from the tax imposed by § 59-26-103.

III. Analysis

This Analysis section will provide analyses for the following three conclusions. First, the pay-per-view services and the satellite television programming sold by the Company to hotels and hospitals are subject to the multi-channel video or audio service tax and are not subject to Utah sales taxes. Second, COMPANY 2's sales of satellite television programming to the Company are subject to the multi-channel video or audio service tax. Third, for the pay-per-view services, the lodging facility is not responsible for the collection and remittance of sales taxes on the lodging facility's sales to its guests.

A. The Pay-Per-View Services and the Satellite Television Programming Sold by the Company to the Hotels and Hospitals are Subject to the Multi-Channel Video or Audio Service Tax and are Not Subject to Utah Sales and Use Taxes.

Section 59-26-103 imposes "a tax on the purchaser equal to 6.25% of amounts paid or charged for multi-channel video or audio service provided by a multi-channel video or audio service provider." Utah Code § 59-26-102(3) broadly defines a multi-channel video or audio service provider to include the following:

- (a) "Multi-channel video or audio service provider" means any person or group of persons that:
 - (i) provides multi-channel video or audio service and directly or indirectly owns a significant interest in the multi-channel video or audio service; or
 - (ii) otherwise controls or is responsible through any arrangement, the management and operation of the multi-channel video or audio service.
- (b) "Multi-channel video or audio service provider" includes the following except as specifically exempted by state or federal law:
 - (i) a cable operator;
 - (ii) a CATV provider;
 - (iii) a multi-point distribution provider;
 - (iv) a MMDS provider;
 - (v) a SMATV operator;
 - (vi) a direct-to-home satellite service provider; or
 - (vii) a DBS provider.

The Utah Code does not specifically define a multi-channel video or audio service.

Applying this law to your facts, the Company is a multi-channel video or audio service provider under § 59-26-102(3)(a)(ii). The Company is responsible for “the management and operation of the multi-channel video or audio service” provided to the hotels and hospitals. The Company describes itself as providing or further distributing the pay-per-view movies and music services and satellite television programming. Also, the Company invoices the hotels and hospitals for the satellite television programming and for the movies and music services. Additionally, the Company provides hotels and hospitals with a non-hardware component that enables menus to be displayed on the guest’s or patient’s television. A hotel guest or hospital patient uses these menus to select the pay-per-view movies or music or to select the satellite television programming. The selection by the guest or patient causes the system to deliver the requested content to the correct guest or patient room. Under § 59-26-104, the Company is responsible for the collection and remittance of the multi-channel video or audio service tax.

The above analysis is consistent with a prior Commission decision. On March 21, 2012, the Commission issued Private Letter Ruling (“PLR”) 11-005, which addresses the taxability of the various items sold by cable operators, who are clearly multi-channel video or audio service providers. Through PLR 11-005, the Commission concluded that basic cable, basic cable-expanded, premium channels, video on demand, pay per view, and pay per view-boxing/wrestling are subject to the multi-channel video or audio service tax. These cable services discussed in PLR 11-005 are similar to the satellite television programming and the pay-per-view movies and music sold by the Company to the hotels and hospitals. Likewise, the satellite television programming and the pay-per-view movies and music sold by the Company to the hotels and hospitals are subject to the multi-channel video or audio service tax, and the Company must collect and remit this tax.

Section 59-12-103(1) imposes Utah sales and use taxes on an enumerated list of products and services. Products and services not included on the list found in § 59-12-103(1) are not subject to Utah sales and use taxes. The Company’s sales of the multi-channel video or audio service to the hotels and hospitals are not among the items enumerated in § 59-12-103(1) as being taxable. In particular, the Company’s sales of the multi-channel video or audio service are not sales of telecommunications services, amounts paid or charged as admission or user fees, or sales of a product transferred electronically, as explained below.

The Company’s sales of the multi-channel video or audio service are not subject to Utah sales and use taxes as telecommunications services. Section 59-12-103(1)(b)(i) imposes Utah sales and use taxes on purchases of certain telecommunications services. Section 59-12-102(129) defines telecommunications service as follows in part:

- (a) "Telecommunications service" means the electronic conveyance, routing, or transmission of audio, data, video, voice, or any other information or signal to a point, or among or between points.
.....
- (c) "Telecommunications service" does not include:
.....
 - (ix) a radio and television audio and video programming service:

- (A) regardless of the medium; and
- (B) including:
 - (I) furnishing conveyance, routing, or transmission of a television audio and video programming service by a programming service provider;
 - (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
 - (III) audio and video programming services delivered by a commercial mobile radio service provider as defined in 47 C.F.R. Sec. 20.3 . . .

The Company's sales of the multi-channel video or audio service to the hotels and hospitals are the sales of a radio and television audio and video programming service, as described in § 59-12-102(129)(c)(ix)(B)(I). For § 59-12-102(129)(c)(ix)(B)(I), the Company is "a programming service provider" and it is responsible for "furnishing conveyance, routing, or transmission of a television audio and video programming service" to the hotels and hospitals. Because the Company's sales of the multi-channel video or audio service to the hotels and hospital is a radio and television audio and video programming service, the Company's sales are not sales of a telecommunications service subject to Utah sales and use taxes.¹

The Company's sales of the multi-channel video or audio service to hotels and hospitals are not subject to Utah sales and use taxes as amounts paid or charged as admission or user fees. Section 59-12-103(1)(f) imposes Utah sales and use taxes on "amounts paid or charged as admission or user fees for . . . movies, . . . shows[,] . . . concerts, . . . or any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity." Under R865-19S-33(1)(a), "'Admission' means the right or privilege to enter into a place. Admission includes the amount paid for the right to use a reserved seat or any seat in an auditorium, theater, circus, stadium, schoolhouse, meeting house, or gymnasium to view any type of entertainment." The Company's sales of the multi-channel video or audio service to the hotels and hospitals does not provide a right to enter into a place. Thus, those sales are not amounts paid or charged as admission. Under R865-19S-108A, "'user fees' includes charges imposed on an individual for access to the following, if that access occurs at any location other than the individual's residence: 1. video or video game; 2. television program; or 3. cable or satellite broadcast." The Company's sales of the multi-channel video or audio service to the hotels and hospitals does not include charges imposed "on an individual." Thus, those sales are not amounts paid or charged as user fees. Therefore, the Company's sales of the multi-channel video or audio service to the hotels and hospitals are not subject to sales and use taxes as amounts paid or charged as admission or user fees.

The Company's sales of the multi-channel video or audio service are also not subject to Utah sales and use taxes as amounts paid or charged for a product transferred electronically. Section 59-12-103(1)(m) imposes Utah sales and use taxes on "amounts paid or charged for a sale . . . of a product transferred electronically . . . regardless of whether the sale provides . . . a right of permanent use of the product . . . or . . . a right to use the product that is less than a permanent use

¹ Although "radio and television audio and video programming service" is not separately defined in § 59-12-102 and the term is instead defined within the definition of "telecommunications service," the Utah Code still recognizes that "radio and television audio and video programming service" exists. Additionally, the Utah Code does not specifically list sales of "radio and television audio and video programming service" as taxable in § 59-12-103.

. . .” Section 59-12-102(95) defines product transferred electronically as the following, in part: “(a) . . . "product transferred electronically" means a product transferred electronically that would be subject to a tax under this chapter if that product was transferred in a manner other than electronically. . . .” As previously discussed, the item the Company sells is a radio and television audio and video programming service for purposes of the Sales and Use Tax Act. A company cannot provide a radio and television audio and video programming service in a manner other than electronically. Thus, a radio and television audio and video programming service cannot meet the requirement in the definition of product transferred electronically that “the product transferred electronically . . . would be subject to a tax under this chapter if that product was transferred in a manner other than electronically.”

Statutory language concerning a product transferred electronically was enacted in 2008, effective January 1, 2009.² Similar language is currently found in § 59-12-102(95) and § 59-12-103(1)(m). Prior to the enactment of the product transferred electronically language in 2008, the Utah Legislature enacted sales and use taxes on the multi-channel video or audio service in 2003.³ In 2004, the Utah Legislature removed multi-channel video or audio service from the Sales and Use Tax Act and enacted the Multi-Channel Video or Audio Service Tax Act.⁴ The multi-channel video or audio service tax has continued to be in effect in the Utah Code through the present time. During 2009 through the present, while both the sales and use taxes on a product transferred electronically and the multi-channel video or audio service tax have been imposed, sales of the multi-channel video or audio service have not been simultaneously subject both to Utah sales and use taxes and to the multi-channel video or audio service tax. This fact also suggests a multi-channel video or audio service is not a product transferred electronically.

Additionally, statutory language currently found in the Sales and Use Tax Act also supports the conclusion that the Company’s sales of the multi-channel video or audio service is not a product transferred electronically. Section 59-12-102(129) excludes from telecommunications service a product transferred electronically, in Subsection (129)(c)(viii), and separately excludes from telecommunications service a radio and television audio and video programming service, in Subsection (129)(c)(ix). Having a product transferred electronically, which includes music and video, excluded in a different subsection than a radio and television audio and video programming service, supports the conclusion that a product transferred electronically and a radio and television audio and video programming service are different items.

Above, this private letter ruling analyzed why the Company’s sales are not taxable as sales of telecommunications services, as admission or user fees, or as products transferred electronically. The Company’s sales of the multi-channel video or audio service to hotels and hospitals do not meet any of the other enumerated items found in § 59-12-103(1), as well. Thus, the Company’s sales of the multi-channel video or audio service to the hotels and hospitals are not subject to Utah sales and use taxes.

The finding that the Company’s sales of the multi-channel video or audio service are not subject to Utah sales and use taxes is consistent with analysis contained in PLR 11-005. In

² H.B. 206, 2008 Leg., General Sess. (Utah 2008).

³ S.B. 213, 2003 Leg., General Sess. (Utah 2003).

⁴ S.B. 195, 2004 Leg., General Sess. (Utah 2004).

PLR 11-005, the Commission concluded that basic cable, basic cable-expanded, premium channels, video on demand, pay per view, and pay per view-boxing/wrestling are not subject to Utah sales and use taxes. In PLR 11-005, the Commission stated:

[These cable services] are not subject to Utah sales tax because they are not among the limited services enumerated in § 59-12-103(1) as being subject to tax. Although [these cable services] might be similar to telecommunications services which are taxable, [these cable services] fall outside the statutory definition of telecommunications services found in § 59-12-102(118) [currently found in § 59-12-102(129)]. They are “radio and television audio and video programming services” which are specifically excluded from telecommunications services under § 59-12-102(118)(c)(ix) [currently found in § 59-12-120(129)(c)(ix)].

The Company’s sales of the multi-channel video or audio service to hotels and hospitals are similarly radio and television audio and video programming services and are not subject to Utah sales and use taxes.

As mentioned previously, this private letter ruling does not address the tax treatment of the pay-per-use games because you indicated you did not need a ruling on this product.

B. COMPANY 2’s Sales of Satellite Television Programming to the Company Are Subject to the Multi-Channel Video or Audio Service Tax.

The Company inquired whether its purchase of satellite television programming from COMPANY 2 is taxable or tax exempt. Section 59-26-103 imposes the multi-channel video or audio service tax “on the purchaser equal to 6.25% of amounts paid or charged for multi-channel video or audio service provided by a multi-channel video or audio service provider.” The Company’s purchase from COMPANY 2 is a transaction that meets § 59-26-103, and is thus subject to tax. COMPANY 2 is a multi-channel video or audio service provider, who is selling to the Company a multi-channel video or audio service.

You explained that the Company is not the end user of the direct broadcast satellite service provided by COMPANY 2. You explained that COMPANY 2 provides the satellite service to the Company, who further distributes the satellite service to the hotels and hospitals. You explained that the Company provided COMPANY 2 with a Utah sales tax resale certificate.

The Utah sales tax resale certificate, however, cannot apply to the Company’s purchase of satellite television services from COMPANY 2. The Company’s purchase is subject to the multi-channel video or audio service tax, which is found in Title 59, Chapter 26. The Company’s Utah sales tax resale certificate applies to Utah sales and use taxes, which are found in Title 59, Chapter 12. The Sales and Use Tax Act includes the sales tax exemption for “a product purchased for resale,” found in § 59-12-104(25). The Multi-Channel Video or Audio Service Tax Act located in Title 59, Chapter 26, has no similar exemption. The Utah Code contains no language indicating that the sales and use tax exemption found in § 59-12-104(25) can be applied to the multi-channel

video or audio service tax, found in Title 59, Chapter 26. Thus, unless the Utah Legislature changes the law, there is no resale exemption for the multi-channel video or audio service tax.

In conclusion, the multi-channel video or audio service tax is imposed on the transaction between COMPANY 2 and the Company and also on the transaction between the Company and the hotel or hospital.

C. For the Pay-Per-View Services, the Hotel is Not Responsible for the Collection and Remittance of Sales Taxes on the Hotel's Sales to its Guests.

Utah Administrative Code R865-19S-108 states the following in part:

“[U]ser fees” includes charges imposed on an individual for access to the following, if that access occurs at any location other than the individual's residence:

1. video or video game;
2. television program; or
3. cable or satellite broadcast.

Applying this rule to your private letter ruling request, the amounts charged by hotels to their guests for the pay-per-view movie and music services are “user fees.” As mentioned previously, you indicated that you did not need this private letter ruling to address the taxability of the pay-per-use games.

Generally, under § 59-12-103(1)(f) user fees are subject to Utah sales taxes. However, if the user fees are for an unassisted amusement device, those user fees are exempt from tax under § 59-12-104(40)(a). The exemption found in § 59-12-104(40)(a) applies to “sales or rentals of the right to use or operate for amusement, entertainment, or recreation an unassisted amusement device.” Thus, we must consider whether a hotel guest's purchase of a pay-per-view item involves the sale of the right to use an unassisted amusement device.

Assisted and unassisted amusement devices are defined in § 59-12-102. Under § 59-12-102(14), an assisted amusement device is defined as follows:

“Assisted amusement device” means an amusement device . . . that is started and stopped by an individual:

- (a) who is not the purchaser or renter of the right to use or operate the amusement device . . . ; and
- (b) at the direction of the seller of the right to use the amusement device . . .

Under § 59-12-102(135), an unassisted amusement device is defined as follows:

“Unassisted amusement device” means an amusement device . . . that is started and stopped by the purchaser or renter of the right to use or operate the amusement device . . .

Applying the above definitions, a hotel guest uses a hotel's television to select and receive pay-per-view movies and music. Thus, the hotel guest is using the television as an amusement device. The hotel guest personally starts and stops the pay-per-view movies or music using the television; the hotel's employees are not involved in the starting and stopping. Therefore, the hotel's sale to a guest of pay-per-view movies or music meets the exemption found in § 59-12-104(40)(a), for an unassisted amusement device.

The above analysis is consistent with a prior Commission decision. On June 29, 2016, the Commission issued PLR 15-007, which addresses a situation involving a computer tablet being used as an unassisted amusement device by a restaurant's customers. In PLR 15-007, a restaurant company sells to its customers access to premium content (news, sports, access to social media, songs, and interactive games). To access this content, the customers use the restaurant's computers tablets. In PLR 15-007, the Commission concludes that the funds the restaurant receives for these sales of access to premium content are user fees and that these user fees are exempt under § 59-12-104(40)(a). In PLR 15-007, the Commission provides the following explanation:

The premium content fees charged by the Restaurant Company to its customers are "amounts . . . charged as . . . user fees for . . . [an] amusement, entertainment, recreation, . . . activity" (*see* § 59-12-103(1)(f)). These fees charged by the Restaurant Company are exempt from sales and use taxes under § 59-12-104(40)(a), as being for "sales or rentals of the right to use or operate for amusement, entertainment, or recreation an unassisted amusement device." When the customer uses the computer tablets located on the table tops, the customer is using the POS device system as an amusement device. The computer tablets meet the definition of an unassisted amusement device because the customers start and stop the amusement activities on the computer tablets. The customer starts and stops the news, social media, interactive games, and songs using the computer tablets; and the Restaurant Company's employees are not assisting the starting and stopping. For the songs, the customer is the person selecting the song to be played in the restaurant and the Restaurant Company's employees have no active role in playing that song for the customer. Instead, the song is played using the Restaurant Company's POS device system and connected sound system.

The lack of activity by the Restaurant Company's employees can be contrasted with the activities of the employees of another, unrelated company. In a prior Commission decision for Appeal No. 09-0049, the Commission found that a company's go-karts used on the company's track were *assisted* amusement devices because the company's customers were "waived on and then off the track by employees at the direction of the [company] and the operation [of the go-karts] [was] assisted and supervised by the [company]'s employees."

(Footnote removed.)

The situation presented in PLR 15-007 is similar to that of this private letter ruling. The hotel's charge to a guest for access to pay-per-view items is a user fee just as the restaurant's charges to its customers for access to premium content are user fees. The hotel guests use the televisions as

amusement devices; the restaurant customers use the computer tablets as amusement devices. The televisions meet the definition of an unassisted amusement device because the hotel guests start and stop the amusement activities on the televisions. Similarly, the restaurant guests started and stopped the access to premium content on the computer tablets. The hotel's employees are not assisting the starting and stopping of the pay-per-view movies and music, and, likewise, the restaurant's employees are not assisting the starting and stopping of the customers' access to the premium content. As explained earlier, the hotel's charges for pay-per-view items meet the requirements for the exemption found in § 59-12-104(40)(a). Similarly, the restaurant's charges for access to premium content are exempt under § 59-12-104(40)(a).

Therefore, the hotel is not responsible for the collection and remittance of sales taxes on the hotel's sales of pay-per-view movies and music to its guests.

IV. Conclusion

The pay-per-view movie and music services sold by the Company to the hotels and hospitals are subject to the multi-channel video or audio service tax and are not subject to Utah sales and use taxes. As mentioned previously, this private letter ruling does not address the tax treatment of the pay-per-view games because you indicated you did not need a ruling on that product.

The Company is responsible for the remittance of the multi-channel video or audio service tax for the pay-per-view movie and music services sold by the Company to a hotel. The hotel is not required to remit sales taxes on the user fees it collects from its guests; these user fees are exempt under § 59-12-104(40) as "sales or rentals of the right to use or operate for amusement, entertainment, or recreation an unassisted amusement device . . ."

The sale of the direct broadcast satellite service from COMPANY 2 to the Company is subject to the multi-channel video or audio service tax. The separate sales of the direct broadcast satellite service from the Company to the hotels and hospitals are also subject to the multi-channel video or audio service tax. The sales tax exemption for a product purchased for resale, found in § 59-12-104(25), cannot be applied to the multi-channel video or audio service tax, found in Title 59, Chapter 26.

The Tax Commission's conclusions are based on the facts as you described them and the Utah law currently in effect. Should the facts be different or if the law were to change, a different conclusion may be warranted. If you feel we have misunderstood the facts as you have presented them, you have additional facts that may be relevant, or you have any other questions, please feel free to contact the Commission.

Additionally, you may also appeal the private letter ruling in the following two ways.

First, you may file a petition for declaratory order, which would serve to challenge the Commission's interpretation of statutory language or authority under a statute. This petition must be in written form, and submitted within thirty (30) days after the date of this private letter

ruling. You may submit your petition by any of the means given below. **Failure to submit your petition within the 30-day time frame could forfeit your appeal rights and will be deemed a failure to exhaust your administrative remedies.** Declaratory orders are discussed in Utah Administrative Code R861-1A-34 C.2., available online at <http://tax.utah.gov/commission/effective/r861-01a-034.pdf>, and in Utah Administrative Code R861-1A-31, available online at <http://tax.utah.gov/commission/effective/r861-01a-031.pdf>.

Second, you may file a petition for redetermination of agency action if your private letter ruling leads to an audit assessment, a denial of a claim, or some other agency action at a division level. This petition must be written and may use form TC-738, available online at <http://tax.utah.gov/forms/current/tc-738.pdf>. Your petition must be submitted by any of the means given below, within thirty (30) days, generally, of the date of the notice of agency action that describes the agency action you are challenging.

You may access general information about Tax Commission Appeals online at <http://tax.utah.gov/commission-office/appeals>. You may file an appeal through any of the means provided below:

- **Best way**—by email: taxappeals@utah.gov
- By mail: Tax Appeals
USTC
210 North 1950 West
Salt Lake City, UT 84134
- By fax: 801-297-3919

For the Commission,

Rebecca L. Rockwell
Commissioner

RLR/aln
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