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## ALABAMA DEPARTMENT OF REVENUE REVENUE RULING 95-011

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

TO:

FROM: Commissioner of Revenue  
Alabama Department of Revenue

DATE: January 31, 1996

RE: Applicability of Alabama sales tax to pay-per-view services, free to guests services, or video games services and if applicable, the entity required to collect and remit the tax due.

### ISSUES AND FACTS

The facts as represented by Requestor are as follows:

#### 1. Pay Per View Service

Corporation "A" provides to hotel guests a pay-per-view video entertainment service on television sets in hotel rooms ("PPV Service"). The PPV Service is provided by means of a "PPV System" in the hotel, consisting of a central control unit linked by wire to the television set in the hotel room. The control unit contains a rack of video cassette players ("VCPs"), a computer and other electronic equipment. The hotel provides space for the installation of the PPV system, which is owned, installed and maintained by Corporation "A", and is solely under the control of Corporation "A".

The guest selects a movie from a menu of available titles appearing on the television screen. When the guest presses the corresponding number on a television set's remote control, a specific VCP in the PPV system control unit is electronically accessed and begins to run the tape of the movie. (In some smaller hotels the PPV system is accessed by telephone through a

PBX system rather than by the remote control.) The signal is carried to the television set in the guest's room by wire.

The agreement between Corporation "A" and the operator of the hotel provides that, based upon daily information reported by the monitoring unit of the PPV system, the hotel, on behalf of OCV, is to place a specified charge on a guest's hotel bill for each movie viewed. The hotel retains a specified percentage (e.g., 10%) of each charge collected and remits the remainder to OCV on a monthly basis.

## 2. Free to Guest Service

Corporation "A" may provide various channels of television programming (e.g., ESPN, TBS, USA, HBO and CNN) that are delivered to the hotel by satellite or cable and are free to the hotel guests. The hotel would pay a specific monthly rate per room for this service.

## 3. Video Game Service

Corporation "A" may provide a selection of video games for the hotel guests. The games will be accessed via a game controller in the hotel room and provided in a manner similar to the PPV service described above, except that CD-ROM players would be used instead of VCP's.

The issue is as follows:

Whether pay-per-view services, free to guest services, or video game services are subject to Alabama sales tax and if applicable, what is the entity required to collect and remit the tax due?

## LAW AND ANALYSIS

### 1. Pay Per View Service

Ala. Code §40-26-1 (1993 Replacement Volume) provides the following:

There is hereby levied and imposed, in addition to all other taxes of every kind now imposed by law, a privilege or license tax upon every person, firm or corporation engaging in the business of renting or furnishing any room or rooms, lodging or accommodations to transients in any hotel, motel, inn, tourist camp, tourist cabin or any other place in which rooms, lodgings or accommodations are regularly furnished to transients for a consideration, . . . . including the charge for use or rental of

personal property and services furnished in such room, . . .

Based on the above, it is clear that it would be the hotel's responsibility to collect and remit lodgings tax on the receipts from each guest for PPV service. The percentage paid to Corporation "A" would be an expense for income tax purposes to the hotel. Corporation "A" would not be liable for lodgings, or Alabama sales or use tax on their receipts. However, the receipts to Corporation "A" would be subject to income tax.

In addition, Ala.Code §40-23-61(a) (1993) states that "an excise tax is hereby imposed on the storage, use or consumption in this state of tangible personal property, . . .".

Corporation "A" would be responsible to pay or remit Alabama sales or use tax on the cost of all equipment that comprise the PPV system installed in the hotel.

2. Free To Guest Service

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) 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 therefore there is no Alabama sales, use or rental tax applicable. However, the receipts would be subject to Alabama income tax.

There would be no lodgings tax due the hotel since no charges are made to the guests for this service.

3. Video Game Service

If the agreement between Corporation "A" and the hotel is the same as with the PPV service, i.e., the hotel bills the guests a separate charge for this service, the answer would be the same as that for PPV Service, answered above, in that it would be the hotel's responsibility to collect and remit lodgings

tax on the receipts from each guest for this service. Corporation "A" would be responsible for paying or remitting Alabama sales or use tax on the cost of the equipment placed in the hotel to provide the video game service.

#### HOLDING

Based upon the particular facts of this case, it would be the hotel's responsibility to collect and remit lodgings tax on the receipts from each guest for pay per view service. The percentage paid to Corporation "A" would be an expense for income tax purposes to the hotel. Corporation "A" would not be liable for lodgings, Alabama sales or use tax for the receipts. However, the receipts to Corporation "A" would be subject to income tax.

Corporation "A" would be responsible to pay or remit Alabama sales or use tax on the cost of all equipment that comprises the PPV system installed in the hotel. Ala. Code §§40-26-1 and 40-23-61(a).

In the case of free to guest services, there would be no lodgings tax due to the hotel since no charges are made to the guests for this service.

The receipts received by Corporation "A" from the hotel for providing satellite or cable service are not subject to Alabama sales or use tax since the signal transmitted is not considered to be tangible personal property. Ala. Code §40-23-2. These receipts would, however, be subject to income tax.

Regarding video game service, if the agreement between Corporation "A" and the hotel is the same as with the PPV service, as indicated by Requestor, the hotel would be responsible for collecting and remitting lodgings tax on the receipts from the guests, and Corporation "A" would be responsible for paying or remitting Alabama sales or use tax on the cost of the equipment placed in the room to provide the service. Ala. Code §§40-26-1 and 40-23-61(a).

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RPE:MJM:pj