

**FINAL PRIVATE LETTER RULING**

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**REQUEST LETTER**

11-005

From: <E-MAIL 1>  
To: <E-MAIL 2>  
Date: 8/15/2011 12:28 PM  
Subject: Question Concerning Multi-Channel Audio and Video Service Tax  
Attachments: UT - Cable Services.pdf

Hi NAME 1,

Thank you for returning my phone call concerning the cable services that are included in the Multi-Channel Audio and Video Service Tax.

I work for COMPANY NAME 1 which is a tax research and software company. We are trying to update our tax information for our customers so that they may tax their customers correctly.

Please see the attached list of cable charges that are in question. Can you please let me know which cable charges should be taxed for the Multi-Channel Audio and Video Service tax? These charges are listed separately on the customers' invoices. We feel that charges #1 through #6 on the attached list should be taxed. We are not sure if # 11 called "Digital Video Recorder Service" should also be taxed. Please let me know which charges on the attached list should be taxed by replying to this e-mail.

As you told me in our phone conversation, this information is not available on the Utah website.

Thank you in advance for your help!

Lisa

NAME 2  
TITLE  
COMPANY NAME 1  
ADDRESS 1  
CITY, STATE ZIP CODE 1

PHONE NUMBER  
FAX NUMBER  
E-MAIL  
WEB ADDRESS

1

COMPANY NAME 1 Tax Codes Handbook

Chapter1. Category/Service Codes • Category 20: Cable Services

**Category 20: Cable Services**

Cable services are services that are associated with the provision of cable television.

Category 20 includes the following services:

<b>Number</b>	<b>Service</b>	<b>Description</b>
1	Basic Cable	The charge for a basic cable service plan. This plan usually consists of local network stations, local public access stations, and government channels.
2	Basic Cable-Expanded	A charge to subscribe to additional channels not included in the basic plan.
3	Premium Channels	A charge to subscribe to premium channels not included in the basic plan or expanded plan.
4	Video on Demand	A charge associated with a cable television service which allows TV programming to be viewed upon request by a subscriber at any time.
5	Pay Per View	A charge associated with a cable television service which allows subscribers to view select movies, sporting events, or other events at a pre-determined time.
6	Pay Per View-Boxing/Wrestling	A charge associated with a television service which allows viewers to select “professional” boxing, mixed martial arts and/or wrestling events.
7	Converter Box Rental	The rental charge for the standard digital converter box.
8	Remote Control Rental	The rental charge for the remote control that operates the converter boxes.
9	Equipment/Miscellaneous TPP	A charge for the incidental sale of miscellaneous tangible personal property.
10	High Definition Box Rental	The rental charge for the high definition converter box.
11	Digital Video Recorder Services	A charge for a service that allows viewers to record, pause and rewind live television programs, or to record scheduled programs.
12	Installation (Labor Only)	A charge to initiate cable service. This charge includes the labor necessary to install telecommunications equipment, if such labor is separately stated on the bill. This charge does not include charges for hardware or equipment.
13	Repair (Labor Only)	A charge for the labor to repair a line and/or facility used for cable television connectivity. This charge does not include parts or equipment charges, and must be separately stated from such charges.

## RESPONSE LETTER

March 21, 2012

NAME 2  
TITLE  
COMPANY NAME 1  
ADDRESS 1  
CITY, STATE ZIP CODE 1

**Sent via e-mail**  
**Original to follow in U.S. Mail**

RE: Private Letter Ruling Request–Multi-Channel Audio and Video Service Tax Treatment of Certain Separately Stated Cable Charges

Dear NAME 2:

You have explained that COMPANY NAME 1 is a tax research and software company that requests a ruling on behalf of its customers who provide cable services. COMPANY NAME 1 asks the Commission to rule on the applicability of the Utah multi-channel audio and video service tax to the sales of the following thirteen separately-stated cable items:

1. Basic Cable: The charge for a basic cable service plan. This plan usually consists of local network stations, local public access stations, and government channels.
2. Basic Cable-Expanded: A charge to subscribe to additional channels not included in the basic plan.
3. Premium Channels: A charge to subscribe to premium channels not included in the basic plan or expanded plan.
4. Video on Demand: A charge associated with a cable television service which allows TV programming to be viewed upon request by a subscriber at any time.
5. Pay Per View: A charge associated with a cable television service which allows subscribers to view select movies, sporting events, or other events at a pre-determined time.
6. Pay Per View-Boxing/Wrestling: A charge associated with a television service which allows viewers to select “professional” boxing, mixed martial arts and/or wrestling events.

7. Converter Box Rental: The rental charge for the standard digital converter box.
8. Remote Control Rental: The rental charge for the remote control that operates the converter boxes.
9. Equipment/Miscellaneous TPP: A charge for the incidental sale of miscellaneous tangible personal property.
10. High Definition Box Rental: The rental charge for the high definition converter box.
11. Digital Video Recorder Services: A charge for a service that allows viewers to record, pause and rewind live television programs, or to record scheduled programs.
12. Installation (Labor Only): A charge to initiate cable service. This charge includes the labor necessary to install telecommunications equipment, if such labor is separately stated on the bill. This charge does not include charges for hardware or equipment.
13. Repair (Labor Only): A charge for the labor to repair a line and/or facility used for cable television connectivity. This charge does not include parts or equipment charges, and must be separately stated from such charges.

Through a subsequent email, you also asked the Commission to rule on the following additional issue:

Would fees to connect (such as a set up fee) or disconnect (a fee due to non-payment) cable services be subject to the Utah Multi-Channel Audio and Video Service Tax?

We will provide our analysis after the Applicable Law section, below.

### I. Applicable Law

Utah Code § 59-26-103 imposes the Utah multi-channel video and audio service tax as follows:

[T]here 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 § 59-26-102(3) defines a multi-channel video or audio service provider 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 § 59-12-103(1) imposes the Utah sales and use tax as follows:

A tax is imposed on the purchaser . . . 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;
  - (ii) mobile telecommunications service that originates and terminates within the boundaries of one state only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or
  - (iii) an ancillary service associated with a:
    - (A) telecommunications service described in Subsection (1)(b)(i); or
    - (B) mobile telecommunications service described in Subsection (1)(b)(ii);
- .....
- (g) amounts paid or charged for services for repairs or renovations of tangible personal property, unless Section 59-12-104 provides for an exemption from sales and use tax for:
  - (i) the tangible personal property; and
  - (ii) parts used in the repairs or renovations of the tangible personal property described in Subsection (1)(g)(i), whether or not any parts are actually used in the repairs or renovations of that tangible personal property;
- .....
- (k) amounts paid or charged for leases or rentals of tangible personal property if within this state the tangible personal property is:
  - (i) stored;
  - (ii) used; or
  - (iii) otherwise consumed;
- .....

Utah Code § 59-12-102(118) defines telecommunications service to exclude a radio and television audio and video programming 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;  
.....

Utah Code § 59-12-102(93) defines repairs as follows:

- (a) "[R]epairs or renovations of tangible personal property" means:
  - (i) a repair or renovation of tangible personal property that is not permanently attached to real property; or
  - (ii) attaching tangible personal property or a product transferred electronically to other tangible personal property if:
    - (A) the other tangible personal property to which the tangible personal property or product transferred electronically is attached is not permanently attached to real property; and
    - (B) the attachment of tangible personal property or a product transferred electronically to other tangible personal property is made in conjunction with a repair or replacement of tangible personal property or a product transferred electronically.

Utah Code § 59-12-102(87) defines purchase price as follows:

- (a) "Purchase price" and "sales price" mean the total amount of consideration:
  - (i) valued in money; and
  - (ii) for which tangible personal property, a product transferred electronically, or services are:
    - (A) sold;
    - (B) leased; or
    - (C) rented.  
.....

- (b) "Purchase price" and "sales price" include:
  - ....
  - (iii) a charge by the seller for any service necessary to complete the sale . . .
  - ....
- (c) "Purchase price" and "sales price" do not include:
  - ....
  - (ii) the following if separately stated on an invoice, bill of sale, or similar document provided to the purchaser:
    - ....
    - (C) an installation charge;
    - ....

Utah Code § 59-12-102(87) defines installation charge as follows:

- (a) Except as provided in Subsection (49)(b), "installation charge" means a charge for installing:
  - (i) tangible personal property; or
  - (ii) a product transferred electronically.
- (b) "Installation charge" does not include a charge for:
  - (i) repairs or renovations of:
    - (A) tangible personal property; or
    - (B) a product transferred electronically; or
  - (ii) attaching tangible personal property or a product transferred electronically:
    - (A) to other tangible personal property; and
    - (B) as part of a manufacturing or fabrication process.

## II. Analysis

### **A. Items 1-6 and 11**

The following items are charges for multi-channel video or audio services and as such are subject to the multi-channel audio and video service tax imposed by § 59-26-103, but not subject to Utah sales tax:

<u>Item</u>	
<u>No.</u>	<u>Name</u>
1.	Basic Cable
2.	Basic Cable-Expanded
3.	Premium Channels
4.	Video on Demand
5.	Pay Per View
6.	Pay Per View-Boxing/Wrestling
11.	Digital Video Recorder Services

Section 59-26-103 imposes a tax of "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 Utah Code defines a multi-channel video or audio service provider as a person or group of persons that provide, own a significant interest in, or otherwise control, manage, and operate a multi-channel video or audio service. The Utah Code does not specifically define a multi-channel video or audio service.

Items 1-6 are charges for multi-channel video and audio services. The cable television providers are supplying one-way transmissions of video or audio programming content to their subscribers. For Items 1-6, subscribers' interactions are generally limited to selecting and viewing the content.

Item 11 is also a charge for multi-channel video and audio services because Item 11 enhances the programming content services of Items 1-6. Subscribers must have the content services of Items 1-6 to use the recording service of Item 11. Although the Digital Video Recorder Service may also require a special cable box, Item 11 seems less of an enhancement of the box or other tangible personal property than of the programming content service.<sup>1</sup>

Items 1-6 and 11 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 Items 1-6 and 11 might be similar to telecommunications services which are taxable, Items 1-6 and 11 fall outside the statutory definition of telecommunications services found in § 59-12-102(118). They are "radio and television audio and video programming services" which are specifically excluded from telecommunications services under § 59-12-102(118)(c)(ix).

### **B. Items 7, 8, and 10**

The following items are charges for rentals of tangible personal property and as such are subject to the Utah sales tax under § 59-12-103(1)(k), but not subject to the multi-channel audio and video service tax:

<u>Item</u>	
<u>No.</u>	<u>Name</u>
7.	Converter Box Rental
8.	Remote Control Rental
10.	High Definition Box Rental

### **C. Items 9, 12, and 13**

Item No. 9. Equipment/Miscellaneous TPP is a charge for the sale of tangible personal property and is subject to Utah sales tax under § 59-12-103(1)(a), but is not subject to the multi-channel audio and video service tax.

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<sup>1</sup> Item 11 Digital Video Recorder Services, as described by COMPANY NAME 1 does not include any rental or equipment charges for tangible personal property. If Item 11 included such charges, then Item 11 could be subject to sales tax.

Item No. 12. Installation (Labor Only) is not subject to the multi-channel audio and video service tax because it is not a multi-channel video or audio service. Furthermore, it is not subject to the Utah sales tax because it is not a service taxable under § 59-12-103(1) and is not part of the purchase price of any other item taxable under § 59-12-103(1). Notably, § 59-12-102(87) excludes an installation charge from the definition of purchase price if the charge is separately stated on the invoice

Item No. 13. Repair (Labor Only) is not subject to the multi-channel audio and video service tax because it is not a multi-channel video or audio service. However, it might be subject to the Utah sales tax. Repairs of tangible personal property are subject to Utah sales tax under § 59-12-103(1)(g). Under § 59-12-102(93), repairs of tangible personal property do not include repairs of tangible personal property permanently attached to real property. Thus, any repair charges for repairs to items permanently attached to real property are not subject to Utah sales tax. Repair of home wiring, for example, would be nontaxable. Most other repairs, including repairs of the converter box, the remote control, the DVR equipment, etc., are all subject to sales tax.

#### **D. Fees to Connect and Disconnect**

The fees to connect (such as a set up fee) or disconnect (a fee due to non-payment) cable services would be subject to the Utah multi-channel audio and video service tax. The connect and disconnect services are necessary for subscribers to receive the video or audio programming services, so the fees to connect and disconnect are part of the amounts charged for the multi-channel video and audio services.<sup>2</sup> However, these fees are not subject to Utah sales tax, for the same reasons as for Items 1-6 and 11.

### III. Conclusion

The following are subject to the multi-channel audio and video service tax, but not to the Utah sales tax:

1. Basic Cable
2. Basic Cable-Expanded
3. Premium Channels
4. Video on Demand
5. Pay Per View

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<sup>2</sup> The determination that connect and disconnect fees for cable services are subject to the Utah multi-channel audio and video service tax for cable services is similar to the tax treatment of connect and disconnect fees for telecommunications services, which are subject to Utah sales tax and Utah municipal telecom tax. The connect and disconnect fees charged by telecommunications service providers are charges necessary to complete the sale of the services and subject to Utah sales tax under Utah Code § 59-12-102(87)(b)(iii) because the fees are part of the purchase price for the taxable telecommunications services. The connect and disconnect fees for telecommunications services are also subject to the Municipal Telecom Tax, according to Utah Tax Commission Publication 62, page 5, available online at <http://tax.utah.gov/forms/pubs/pub-62.pdf>. As the services necessary to connect or disconnect cable are similar to the services necessary to connect or disconnect a landline for telecommunications, it follows then that the connect and disconnect fees for cable services should be similarly treated and subject to the Utah multi-channel audio and video service tax for cable services.

6. Pay Per View-Boxing/Wrestling.
11. Digital Video Recorder Services

The following are subject to the Utah sales tax, but not the multi-channel audio and video service tax:

7. Converter Box Rental
8. Remote Control Rental
9. Equipment/Miscellaneous TPP
10. High Definition Box Rental

The following is not subject to the multi-channel audio and video service tax. If the charge is separately stated on the invoice, it is also not subject to the Utah sales tax:

12. Installation (Labor Only)

The following is not subject to the multi-channel audio and video service tax but would be subject to the Utah sales tax as a repair of tangible personal property only if not attached to real property:

13. Repair (Labor Only)
  - a. Wiring and other items permanently attached to real property—Nontaxable
  - b. Converter box, remote control, DVR equipment, and similar items of tangible personal property—Taxable

Lastly, the fees to connect (such as a set up fee) or disconnect (a fee due to non-payment) cable services would be subject to the Utah multi-channel audio and video service tax but not subject to Utah sales tax. The attached Table I also provides the tax treatment of the fourteen items of which you inquired.

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.

For the Commission,

D'Arcy Dixon Pignanelli  
Commissioner

DDP/aln  
11-005

**Table I: The Utah Taxability of Cable Services Associated with the Provision of Cable Television as Described by COMPANY NAME 1 and Addressed in Utah PLR 11-005**

No.	Service	Description	Taxability
1	Basic Cable	The charge for a basic cable service plan. This plan usually consists of local network stations, local public access stations, and government channels.	This service is subject to the Utah multi-channel audio and video service tax, but not to the Utah sales tax.
2	Basic Cable-Expanded	A charge to subscribe to additional channels not included in the basic plan.	This service is subject to the Utah multi-channel audio and video service tax, but not to the Utah sales tax.
3	Premium Channels	A charge to subscribe to premium channels not included in the basic plan or expanded plan.	This service is subject to the Utah multi-channel audio and video service tax, but not to the Utah sales tax.
4	Video on Demand	A charge associated with a cable television service which allows TV programming to be viewed upon request by a subscriber at any time.	This service is subject to the Utah multi-channel audio and video service tax, but not to the Utah sales tax.
5	Pay Per View	A charge associated with a cable television service which allows subscribers to view select movies, sporting events, or other events at a pre-determined time.	This service is subject to the Utah multi-channel audio and video service tax, but not to the Utah sales tax.
6	Pay Per View-Boxing/Wrestling	A charge associated with a television service which allows viewers to select “professional” boxing, mixed martial arts and/or wrestling events.	This service is subject to the Utah multi-channel audio and video service tax, but not to the Utah sales tax.
7	Converter Box Rental	The rental charge for the standard digital converter box.	This item is subject to the Utah sales tax, but not the Utah multi-channel audio and video service tax.

*(Continued)*

**Table I: The Utah Taxability of Cable Services Associated with the Provision of Cable Television as Described by COMPANY NAME 1 and Addressed in Utah PLR 11-005**

*(Continued from Prior Page)*

<b>No.</b>	<b>Service</b>	<b>Description</b>	<b>Taxability</b>
8	Remote Control Rental	The rental charge for the remote control that operates the converter boxes.	This item is subject to the Utah sales tax, but not the Utah multi-channel audio and video service tax.
9	Equipment/Miscellaneous TPP	A charge for the incidental sale of miscellaneous tangible personal property.	This item is subject to the Utah sales tax, but not the Utah multi-channel audio and video service tax.
10	High Definition Box Rental	The rental charge for the high definition converter box.	This item is subject to the Utah sales tax, but not the Utah multi-channel audio and video service tax.
11	Digital Video Recorder Services	A charge for a service that allows viewers to record, pause and rewind live television programs, or to record scheduled programs.	This service is subject to the Utah multi-channel audio and video service tax, but not to the Utah sales tax.
12	Installation (Labor Only)	A charge to initiate cable service. This charge includes the labor necessary to install telecommunications equipment, if such labor is separately stated on the bill. This charge does not include charges for hardware or equipment.	This service is not subject to the Utah multi-channel audio and video service tax and, if it is separately stated, is also not subject to the Utah sales tax.
13	Repair (Labor Only)	A charge for the labor to repair a line and/or facility used for cable television connectivity. This charge does not include parts or equipment charges, and must be separately stated from such charges.	This service is not subject to the Utah multi-channel audio and video service tax but would be subject to the Utah sales tax as a repair of tangible personal property <u>only</u> if not attached to real property.
14	Connect and Disconnect	A charge to connect (such as a set up fee) or disconnect (a fee due to non-payment) cable services.	This service is subject to the Utah multi-channel audio and video service tax, but not to the Utah sales tax.