

**STATE OF LOUISIANA  
BOARD OF TAX APPEALS  
LOCAL TAX DIVISION**

**DOCKET NO. L01329**

**Petitioner, DirectTV, LLC**

**versus**

**Respondents,**

**CITY OF BATON ROUGE,  
PARISH OF EAST BATON ROUGE,  
EAST BATON ROUGE PARISH SCHOOL BOARD,  
STEVE CALDWELL, in his Official Capacity as Chief Revenue Analyst for  
The City Of Baton Rouge/East Baton Rouge Parish,  
LINDA HUNT, in her Official Capacity as Finance Director for The City of  
Baton Rouge/East Baton Rouge Parish,**

**CITY OF ZACHARY,  
ZACHARY COMMUNITY SCHOOL DISTRICT,  
DEANNA MANKINS, in her Official Capacity as Chief Financial Officer of  
the City of Zachary,**

**CITY OF BAKER,  
CITY OF BAKER SCHOOL DISTRICT,  
MARY SUE STAGES, in her Official Capacity as Finance Director of the  
City of Baker,**

**CITY OF CENTRAL,  
CENTRAL COMMUNITY SCHOOL DISTRICT;**

**and**

**REVENUE DIVISION FOR CALDWELL, CATAHOULA, CONCORDIA, EAST  
CARROLL, LASALLE AND TENSAS PARISHES,  
THOMAS H. O'NEAL, in his Official Capacity as Director/Administrator of  
the Department Of Revenue & Taxation, Parishes of Caldwell, Catahoula,  
Concordia, East Carroll, Lasalle and Tensas**

**and**

**CALDWELL PARISH SCHOOL BOARD,  
CALDWELL PARISH POLICE JURY**

**and**

**CATAHOULA PARISH SCHOOL BOARD,  
CATAHOULA PARISH POLICE JURY**

**and**

**CONCORDIA PARISH SCHOOL BOARD,  
CONCORDIA PARISH POLICE JURY**

and

**EAST CARROLL PARISH SCHOOL BOARD,  
EAST CARROLL PARISH POLICE JURY**

and

**LASALLE PARJSH SCHOOL BOARD,  
LASALLE PARJSH POLICE JURY**

and

**TENSAS PARISH SCHOOL BOARD,  
TENSAS PARJSH POLICE JURY**

and

**LAFAYETTE PARISH SCHOOL SYSTEM, and Stacey L. Ashy in her official  
Capacity as Director of Sales Tax for Lafayette Parish School System Sales  
Tax Division**

and

**LAFOURCHE PARISH Sales & Use Tax Department, and Amanda Granier  
in her official capacity as Sales Tax Collector for Lafourche Parish**

and

**CALCASIEU PARISH SCHOOL BOARD, and Hollie Howard in her official  
capacity as Director of Sales Tax for Calcasieu Parish School Board**

and

**VERMILION PARISH SCHOOL BOARD, and Nelwyn Soirez in her official  
capacity as Sales Tax Collector for Vermilion Parish School Board**

and

**ASCENSION PARISH SALES AND TAX AUTHORITY, and Kressynda  
Krennerich, in her official capacity as Administrator for the Ascension  
Parish Sales and Use Tax Authority**

and

**ST. MARY PARISH SALES & USE TAX DEPARTMENT, and Jeffery B.  
Lagrange in his official capacity as Director of the St. Mary Parish Sales &  
Use Tax Department**

and

**BOSSIER CITY-PARISH SALES AND USE TAX DIVISION, and Jeffrey  
Whitton in his official capacity as Tax Administrator for the Bossier City-  
Parish Sales and Use Tax Division**

and

**ST. MARTIN PARISH SCHOOL BOARD SALES & USE TAX  
DEPARTMENT, and Casey Broussard in his official capacity as Chief  
Financial Officer for the St. Martin Parish School Board**

and

**ACADIA PARISH SCHOOL BOARD, and Mary Murrell in her official capacity as Sales Tax Administrator for Acadia Parish School Board**

and

**WASHINGTON PARISH SHERIFF'S OFFICE SALES & USE TAX DEPARTMENT**

**CONSOLIDATED FOR PURPOSES OF APPEAL WITH**

**DOCKET NO. L01288**

**Petitioner, DirectTV, LLC**

versus

**Respondents,**

**LAFAYETTE PARISH SCHOOL SYSTEM, and Stacey L. Ashy in her official Capacity as Director of Sales Tax for Lafayette Parish School System Sales Tax Division**

and

**DOCKET NO. L01289**

**Petitioner, DirectTV, LLC**

versus

**Respondents,**

**Amanda Granier in her official capacity as Sales Tax Collector for Lafourche Parish and Lafourche Parish Sales & Use Tax Department,**

and

**DOCKET NO. L01290**

**Petitioner, DirectTV, LLC**

versus

**Respondents,**

**CITY OF BATON ROUGE,**

PARISH OF EAST BATON ROUGE,  
EAST BATON ROUGE PARISH SCHOOL BOARD,  
STEVE CALDWELL, in his Official Capacity as Chief Revenue Analyst for  
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LINDA HUNT, in her Official Capacity as Finance Director for The City  
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ZACHARY COMMUNITY SCHOOL DISTRICT,  
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CITY OF BAKER SCHOOL DISTRICT,  
MARY SUE STAGES, in her Official Capacity as Finance Director of the  
City of Baker,

CITY OF CENTRAL,  
CENTRAL COMMUNITY SCHOOL DISTRICT

and

DOCKET NO. L01312

Petitioner, DirectTV, LLC

versus

Respondents,

REVENUE DIVISION FOR CALDWELL, CATAHOULA, CONCORDIA,  
EAST CARROLL, LASALLE AND TENSAS PARISHES,  
THOMAS H. O'NEAL, in his Official Capacity as Director/Administrator  
of the Department Of Revenue & Taxation, Parishes of Caldwell,  
Catahoula, Concordia, East Carroll, Lasalle and Tensas

and

CALDWELL PARISH SCHOOL BOARD,  
CALDWELL PARISH POLICE JURY

and

CATAHOULA PARISH SCHOOL BOARD,  
CATAHOULA PARISH POLICE JURY

and

CONCORDIA PARISH SCHOOL BOARD,  
CONCORDIA PARISH POLICE JURY

and

EAST CARROLL PARISH SCHOOL BOARD,  
EAST CARROLL PARISH POLICE JURY

and

**LASALLE PARJSH SCHOOL BOARD,  
LASALLE PARJSH POLICE JURY**

**and**

**TENSAS PARISH SCHOOL BOARD,  
TENSAS PARJSH POLICE JURY**

**and**

**DOCKET NO. L01325**

**Petitioner, DirectTV, LLC**

**versus**

**Respondents,**

**ST. MARY PARISH SALES & USE TAX DEPARTMENT, and Jeffery B.  
Lagrange in his official capacity as Director of the St. Mary Parish Sales  
& Use Tax Department**

**and**

**DOCKET NO. L01326**

**Petitioner, DirectTV, LLC**

**versus**

**Respondents,**

**BOSSIER CITY-PARISH SALES AND USE TAX DIVISION, and Jeffrey  
Whitton in his official capacity as Tax Administrator for the Bossier City-  
Parish Sales and Use Tax Division**

**and**

**DOCKET NO. L01327**

**Petitioner, DirectTV, LLC**

**versus**

**Respondents,**

**CALCASIEU PARISH SCHOOL BOARD, and Hollie Howard in her official  
capacity as Director of Sales Tax for Calcasieu Parish School Board**

and

DOCKET NO. L01328

Petitioner, DirectTV, LLC

versus

Respondents,

ST. MARTIN PARISH SCHOOL BOARD SALES & USE TAX  
DEPARTMENT, and Casey Broussard in his official capacity as Chief  
Financial Officer for the St. Martin Parish School Board

and

DOCKET NO. L01358

Petitioner, DirectTV, LLC

versus

Respondents,

ASCENSION PARISH SALES AND TAX AUTHORITY, and Kressynda  
Krennerich, in her official capacity as Administrator for the Ascension  
Parish Sales and Use Tax Authority

and

DOCKET NO. L01359

Petitioner, DirectTV, LLC

versus

Respondents,

VERMILION PARISH SCHOOL BOARD, and Nelwyn Soirez in her  
official capacity as Sales Tax Collector for Vermilion Parish School  
Board

and

DOCKET NO. L01360

Petitioner, DirectTV, LLC

versus

Respondents,

ACADIA PARISH SCHOOL BOARD, and Mary Murrell in her official capacity as Sales Tax Administrator for Acadia Parish School Board

and

DOCKET NO. L01361

Petitioner, DirectTV, LLC

versus

Respondents,

WASHINGTON PARISH SHERIFF'S OFFICE SALES & USE TAX DEPARTMENT

\*\*\*\*\*

**JUDGMENT WITH REASONS**

**ON PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

\*\*\*\*\*

On January 11, 2024, this matter came before the Board for hearing on the *Motion for Summary Judgment* filed by Petitioner, DirectTV, LLC, ("Petitioner"), with Local Tax Judge Cade R. Cole, presiding. Appearing before the Board were David Bayard, attorney for the Petitioner, and Drew Talbott, attorney for the Respondents. At the conclusion of the hearing, the Board took the matter under advisement. The Board now renders this Judgment in accordance with the attached Written Reasons.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, based on the representations of counsel that all parties consent to consolidation for purposes of appeal and that any appeal from the Board's decision shall lie with the First Circuit, that B.T.A. Docket Nos. L01288; L01289; L01290; L01312; L01325; L01326; L01327; L01328; L01358; L01359; L01360; and L01361 are hereby consolidated into the instant B.T.A. Docket No. L01329 for purposes of appeal.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that the Petitioner's *Motion for Summary Judgment* be and is hereby GRANTED, the Petitioner does not owe any additional sales taxes as assessed by Respondents.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that there be Judgment in Favor of the Petitioner and against the Respondents.

**Judgment Rendered and Signed at Baton Rouge, Louisiana, on this 14<sup>th</sup> Day of March, 2024.**

**FOR THE BOARD:**



**LOCAL TAX JUDGE CADE R. COLE**



STATE OF LOUISIANA  
BOARD OF TAX APPEALS  
LOCAL TAX DIVISION

DOCKET NO. L01329

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STEVE CALDWELL, in his Official Capacity as Chief Revenue Analyst for  
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City of Baker,

CITY OF CENTRAL,  
CENTRAL COMMUNITY SCHOOL DISTRICT;

and

REVENUE DIVISION FOR CALDWELL, CATAHOULA, CONCORDIA, EAST  
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THOMAS H. O'NEAL, in his Official Capacity as Director/Administrator of  
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and

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and

**WASHINGTON PARISH SHERIFF'S OFFICE SALES & USE TAX DEPARTMENT**

**CONSOLIDATED FOR PURPOSES OF APPEAL WITH**

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versus

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and

**DOCKET NO. L01289**

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And

DOCKET NO. L01312

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EAST CARROLL, LASALLE AND TENSAS PARISHES,  
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EAST CARROLL PARISH POLICE JURY

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**LASALLE PARISH SCHOOL BOARD,  
LASALLE PARISH POLICE JURY**

**and**

**TENSAS PARISH SCHOOL BOARD,  
TENSAS PARISH POLICE JURY**

**And**

**DOCKET NO. L01325**

**Petitioner, DirectTV, LLC**

**versus**

**Respondents,**

**ST. MARY PARISH SALES & USE TAX DEPARTMENT, and Jeffery B.  
Lagrange in his official capacity as Director of the St. Mary Parish Sales  
& Use Tax Department**

**and**

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Petitioner, DirectTV, LLC

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DEPARTMENT, and Casey Broussard in his official capacity as Chief  
Financial Officer for the St. Martin Parish School Board

and

DOCKET NO. L01358

Petitioner, DirectTV, LLC

versus

Respondents,

ASCENSION PARISH SALES AND TAX AUTHORITY, and Kressynda  
Krennerich, in her official capacity as Administrator for the Ascension  
Parish Sales and Use Tax Authority

and

DOCKET NO. L01359

Petitioner, DirectTV, LLC

versus

Respondents,

VERMILION PARISH SCHOOL BOARD, and Nelwyn Soirez in her  
official capacity as Sales Tax Collector for Vermilion Parish School  
Board

and

DOCKET NO. L01360

Petitioner, DirectTV, LLC

versus

Respondents,

ACADIA PARISH SCHOOL BOARD, and Mary Murrell in her official capacity as Sales Tax Administrator for Acadia Parish School Board

and

DOCKET NO. L01361

Petitioner, DirectTV, LLC

versus

Respondents,

WASHINGTON PARISH SHERIFF'S OFFICE SALES & USE TAX DEPARTMENT

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REASONS FOR JUDGMENT

ON PETITIONER'S MOTION FOR SUMMARY JUDGMENT

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On January 11, 2024, this matter came before the Board for hearing on the Motion for Summary Judgment filed by Petitioner, DirectTV, LLC, ("Petitioner"), with Local Tax Judge Cade R. Cole, presiding. Appearing before the Board were David Bayard, attorney for the Petitioner, and Drew Talbott, attorney for the Respondents. At the conclusion of the hearing, the Board took the matter under advisement. The Board now issues the foregoing Judgment for the following reasons.

Background

Respondents audited Petitioner's sales and use tax returns for the tax periods December 1, 2015, through June 30, 2019, and with respect to Washington Parish only, July 1, 2016, through June 20, 2019 (collectively, the "Tax Periods at Issue"). As a result, Respondents issued Assessments<sup>1</sup> for sales and use taxes on the sale of

<sup>1</sup> The Notices of Assessment are attached to the Dulac Affidavit as Exhibits B through M (collectively, the "Assessments"). The Assessments are also attached to the Petition.

Video-on-Demand (“VOD”) and Pay-Per-View (“PPV”) programming. Petitioner timely appealed to the Board for redetermination of the Assessments.

Prior to filing the instant Petition, Petitioner filed separate challenges against the Respondents directed at the same Assessments.<sup>2</sup> The substance of all such previously-filed challenges was repeated as part of the Petition in this case. When these matters were first called for status conference on June 2, 2022, Mr. Talbot represented to the Board that all parishes had agreed to try all of the underlying disputes simultaneously, and that the parishes had further agreed that any appeal from the Board’s decision would lie with the First Circuit. Counsel for Petitioner agreed with Mr. Talbot’s representations. Counsel stated that they would get something in the record, but no written stipulation or motion to consolidate was filed. Nevertheless, at the start of the hearing, Mr. Talbot<sup>3</sup> stated on the record that all Respondents had agreed that he would represent them for purposes of opposing the Petitioner’s *Motion for Summary Judgment*.<sup>3</sup> The Board additionally notes that counsel for all Respondents jointly signed the *Opposition* filed by Mr. Talbot. Accordingly, the Board will rule on the *Motion for Summary Judgment* with respect to all of the Respondents as to all of the previously docketed Petitions.<sup>4</sup>

The competent summary judgment evidence contains a description of the technology involved in the transactions at issue from Petitioner’s Director of Content Technology & Regulatory Policy Steve Dulac. Both parties rely on Mr. Dulac’s testimony. His affidavit is attached Petitioner’s *Motion for Summary Judgment* and his deposition is attached to the Respondents’ *Opposition*. Mr. Dulac’s deposition testimony is consistent with and expounds upon the sworn statements in his

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<sup>2</sup> Petitioner filed challenges against the collectors in the following Docket Nos.: L01288 (Lafayette, represented by Mr. Talbot); L01289 (Lafourche, represented by Patrick M. Amedee); L01290 (the cities of Zachary, Baton Rouge, Baker, Central and the parish of East Baton Rouge, represented by Mr. Talbot); L01312 (Caldwell, Catahoula, Concordia, East Carroll, LaSalle, and Tensas, all represented by Mr. Talbot); L01325 (St. Mary, represented by Mr. Talbot); L01326 (Bossier City-Parish, represented by Mr. Talbot); L01327 (Calcasieu, represented by Russell “Rusty” Stutes, Jr.); L01328 (St. Martin, represented by Mr. Talbot); L01358 (Ascension, represented by Mr. Talbot); L01359 (Vermillion, represented by Mr. Talbot); L01360 (Acadia, represented by Mr. Talbot); L01361 (Washington, represented by Ross F. Lagarde).

<sup>3</sup> However, Mr. Talbot represented that he could not speak on behalf of Washington Parish as to Satellite transactions.

<sup>4</sup> See note 2, *supra*.



affidavit. Further, there is no contradictory expert or fact testimony in the record. Consequently, the Board accepts his undisputed and un-contradicted presentation of the facts.

Petitioner provides Television ("TV") services to customers in Louisiana in exchange for monthly subscription fees. Petitioner broadcasts TV programming to its customers' Set-Top Boxes by satellite dish and broadband.<sup>5</sup> Petitioner's programming includes cable<sup>6</sup> and local TV channels. Petitioner also offers VOD and PPV for an additional price. Customers can purchase PPV or VOD with their remotes through menus that are accessible to all customers. Fees for PPV or VOD are charged immediately once the customer confirms a purchase and appear on the customer's monthly bill. Petitioner will issue a refund if the customer purchases PPV or VOD but does not actually watch the program.

VOD allows a customer instant access to their choice of TV shows or movies on their own schedule and in an interruption-free manner. VOD may be viewed at any time during a certain period after it is ordered. VOD also gives the customer the ability to pause, fast forward, and rewind. PPV allows a customer to pay to watch individual events via private telecast. PPV programs are scheduled and broadcast at a predetermined date and time. VOD is generally transmitted by broadband, whereas PPV may be transmitted by satellite or broadband.

Petitioner's Set-Top Boxes contain hard drives that store data. The ability to store data allows Petitioner to provide customers with the capacity for Digital Video Recording ("DVR"). DVR allows customers to save programming and watch it at their leisure. DVR temporarily saves programming on the customer's Set-Top Box. DVR automatically saves VOD, but does not automatically save PPV. However, customers can still use DVR to record PPV if they input a command on their remote to begin recording.

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<sup>5</sup> The Set-Top Boxes are capable of OTT (Over the Top) Streaming, meaning that the Set-Top Box can deliver TV programming through the customer's existing broadband internet connection.

<sup>6</sup> Petitioner's cable programming includes basic cable channels, premium cable channels, and sports channels.

In addition, customers can set their DVR to record a live PPV event ahead of time. A customer can do this even before they have paid the required PPV fee. However, the customer will not be able to access the recording unless and until they pay. If and when the customer does pay the fee, then they can watch the recording of the live PPV event from the beginning, as well as pause, rewind, and fast-forward, etc.

The amount of time that PPV or VOD can be stored with DVR is limited. The time limit varies based on negotiated contractual terms between the Petitioner and content providers like Fox, Sony, Disney, Paramount, and Warner Brothers. Typically, the time limit will be a 24-48 hour window starting when the customer begins watching the program.<sup>7</sup> Access to VOD and PPV that has been recorded with DVR is immediately terminated at the end of the period. Termination will occur even if the customer is in the middle of watching the program, but there is some gray area depending on the particular terms of Petitioner's contract with the content provider. In addition, some PPV movies are broadcast on repeat on a particular channel. In such cases, the customer can watch the movie on that channel as many times as they desire until the end of the time period. Watching PPV in this way allows for repeat viewing without needing to record the movie on the Set-Top Box.

In most instances, VOD is not stored on the hard drive until a program is requested. However, some<sup>8</sup> VOD is "staged" on Set-Top Boxes before they are actually purchased. Staging entails the transmission of the programming in encrypted form to a protected partition of the Set-Top Box. Pre-loading content allows it to be immediately accessible should the customer choose to purchase it. PPV live events are not automatically staged.

Petitioner offers another service that is similar to DVR, but functionally distinct, called "Startover." Startover allows a customer to watch programming from the beginning even if they tune in after the program has begun. Startover is available

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<sup>7</sup> The 24-48 hour window does not apply to programming that is not VOD or PPV. For example, a customer could use DVR to record a morning news broadcast on a basic cable channel. That new broadcast would be stored for viewing on the Set-Top Box indefinitely. The customer would have access to that data for the duration of their subscription.

<sup>8</sup> Petitioner selects content to be staged based on expected popularity.

for programming that is transmitted by broadband. Unlike DVR, Startover uses data recorded at DirecTV and does not use data stored on the Set-Top Box.

All data on the hard drive is partitioned and encrypted so that it cannot be transferred to another computer and used without the Set-Top Box. Decryption is controlled by an internal device called a Conditional Access Module ("CAM"). Mr. Dulac described the CAM as a "smartcard" that is similar in appearance to a credit card with a chip. The CAM is programmed to continuously authenticate the customer's right to access programming. Authentication requires a connection to Petitioner's infrastructure via broadband or satellite. If the connection is lost, or the customer's authentication is invalid, the CAM will stop releasing the "key" that allows the customer to access data and services. Thus, the CAM will cut off the customer's access to PPV or VOD if: the viewing period expires; the Set-Top Box is not connected to Petitioner's infrastructure; or if the customer's subscription expires, even if the viewing period is still active.

Mr. Dulac described how Petitioner "streams" VOD and PPV programming. A "stream" in this context consists of a series of packets of data. A packet of data consists of a number of bytes of information. Packets have "headers" that identify where they belong in a stream. Packetized data and headers allow Petitioner to break apart a signal coming through satellite transmission and then piece it back together for delivery. Delivery may occur via satellite transmission or broadband connection. In the case of VOD, the mode of delivery will virtually always be broadband. PPV, on the other hand, is commonly delivered by both satellite and broadband.

According to Mr. Dulac, when a customer watches a stream, they are watching packets of data that have been transmitted in parts and put back together in the Set-Top Box. The packets of data may have been stored on the hard drive, come straight from a broadband connection, or come straight from the satellite transmission. If the customer is watching a recorded program, then the data is coming from the hard drive. If the customer is watching a live broadcast, then the data may be coming directly over satellite or broadband. If the customer is watching a live broadcast, but is a few moments behind, then it is more likely that the data was briefly cached on

the hard drive before viewing. The computer inside the Set-Top Box may temporarily cache live-streamed data as a buffer against interruptions if it detects a slower than optimal connection speed. Mr. Dulac characterized the overall logic of whether data is temporarily cached as a “fluid” situation.

Finally, counsel for Petitioner stated at the hearing that some of the transactions initially identified by the Respondents were direct-to-home satellite services. With the exception of Washington and Acadia Parishes, all respondents agreed that these transactions were not taxable. The transactions were either removed from the audit before the Assessments were issued, or removed by issuance of a revised Assessment. Satellite transactions are thus at issue in this case with respect to Acadia and Washington Parishes only. Furthermore, counsel for respondents represented to the Board at the hearing that Acadia would not dispute the Satellite transactions. However, there is no evidence in the record to suggest that Acadia Parish issued a revised Assessment. Furthermore, counsel stated that he could not speak for Washington Parish on this issue.

#### Summary Judgment Standard

After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue of material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3). The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action, except those disallowed by La. C.C.P. art. 969. La. C.C.P. art. 966(A)(2). The procedure is favored and must be construed to accomplish these ends. *Id.* A genuine issue is one on which reasonable persons could disagree. *Smith v. Our Lady of the Lake Hosp., Inc.*, 93-2512, p. 27 (La. 7/5/94), 639 So.2d 730, 751. A fact is “material” if it would affect the outcome of a trial on the merits. *Suire v. Lafayette City-Par. Consol. Gov’t*, 2004-1459 (La. 4/12/05), 907 So.2d 37. The burden of proof rests with the mover; nevertheless, if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover’s burden on the motion does not require him to negate all essential elements of the

adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. La. C.C.P. art. 966(D)(1). The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. *Id.*

### Discussion

La. R.S. 47:305.16 prohibits the application of state and local sales taxes to the necessary fees incurred with the service of cable television. The exemption does not apply to purchases made by any cable television system; it only applies to funds collected from the subscriber for "regular service, installation and repairs." *Id.* The evidence on summary judgment establishes that Petitioner sells: basic cable, premium cable, sports channels, PPV, and VOD. There appears to be no dispute that basic and premium cable are forms of regular cable service. If the PPV and VOD transactions at issue here are also components of "regular cable service," then the Petitioner is entitled to summary judgment in its favor.

This case presents a number of facts that were also present in *Normand v. Cox Communications Louisiana, LLC*, 14-563 (La. App. 5 Cir. 12/23/14), 167 So.3d 156, 158, *writ denied*, 2015-0158 (La. 4/10/15), 163 So.3d 815. Both cases dealt with PPV and VOD programs. The Fifth Circuit determined that Cox's PPV and VOD were regular cable services, were not software, and were not tangible personal property. The PPV and VOD in this case and the PPV and VOD in *Cox Commc'ns* are factually similar in the following ways: customers received the right to view VOD and PPV for a limited period of time; the PPV and VOD were transmitted in the same manner as other digital cable programming; VOD and PPV programming are data streams which have to be interpreted by software or firmware; customers can't copy or distribute VOD and PPV programming; VOD and PPV are in digital format; VOD and PPV are not stored on a physical tape; both Cox and Petitioner constantly streamed VOD and PPV programming; VOD is available to all customers at any time; and VOD and PPV can be purchased by using a remote control and menus.

On the other hand, the PPV and VOD in this case are factually distinct from the PPV and VOD in *Cox Commc'ns* in the following ways: a customer can download and store the PPV and VOD in this case for a limited time, whereas in *Cox Commc'ns*, no downloading or storage was possible; in this case, some PPV and VOD are viewed from stored or cached data, whereas in *Cox Commc'ns*, all programming was streamed real time from Cox infrastructure; the programming in this case can be stored on the Set-Top Box hard drive, whereas in *Cox Commc'ns*, no storage was possible; the streams in this case are packetized data that is broken apart and reassembled for viewing, whereas the data streams in *Cox Commc'ns* ceased to exist as soon as they reached the customer's television; in this case, customers may rewind or view VOD and some PPV from data stored on the Set-top Box, whereas in *Cox Commc'ns*, Cox had to re-stream VOD or PPV programming if customers wanted to view it again.

The distinction from *Cox Commc'ns* is the temporary storage of data on the Set-Top Boxes in this case. However, that distinction must be viewed in light of the restrictions on the customer's use imposed by the CAM. The CAM can immediately cut off the customer's access to the programming. In fact, the CAM will instantaneously cut the customer off if their cable subscription expires *even though they paid for the VOD or PPV*. The data on the hard drive is useless to the customer without the CAM. The customers do not return the data to Petitioner when their viewing period ends. Consequently, the Board finds that duration of storage is not determinative in this case.

The customers' objective was not to obtain possession of packetized data that was entirely useless on its own. What the customers are truly paying for is the permission to watch a movie, live event, or other program. What the customers are essentially getting is an authorization code that is released by the CAM to grant said permission. Storing the data merely facilitates rewinding, re-watching, or in the case of pre-loaded content, immediately accessing the program while the authorization is in effect. Thus, although the facts of this case differ from *Cox Commc'ns* in some respects, those distinctions do not alter the Board's ultimate conclusion. The PPV and

VOD programming sold by the Petitioner is a service, not a rental or a sale of tangible personal property.

The Respondents urge the Board to find that *Cox Commc'ns* was wrongly decided. The Respondents claim that the Fifth Circuit overlooked the definition of tangible personal property as anything that can be "seen, weighed measured, felt or touched, or is in any other manner perceptible to the senses." Further, the Respondents assert that if PPV and VOD are held to be regular cable services, then everything that Petitioner offers must also be a component of regular cable service. Respondents warn that the result will be an unacceptable expansion of the La. R.S. 47:305.16 exemption.

The Board disagrees. If the Board were to accept that PPV and VOD are tangible personal property because the programming itself can be perceived, the exemption would be read virtually out of existence. Basic cable programming is equally perceptible by sight and sound, and can also be recorded on the Set-top Box. If perceptibility is the sole criteria for taxation, then everything that is broadcast is tangible personal property. The La. R.S. 47:305.16 exemption would then only apply installation and maintenance work.

More importantly, the CAM distinguishes the PPV and VOD from the software that was held to be tangible personal property in *South Central Bell Telephone Co. v. Barthelemy*, 94-0499 (La. 10/17/94), 643 So.2d 1240. In that case, the license to use the software was worthless without transfer of the data. That is not the case here. In this case, the customer can still watch the program directly by streaming it over by satellite or broadband. The CAM authorization to view the PPV and VOD is not worthless. Furthermore, the CAM will cut off access to PPV and VOD if the customer's subscription expires, so the right to view the program can be severed from the perceptible manifestation of the program's data.

The Respondents also suggest that the transactions at issue are taxable telecommunications services. The Board does not agree. The definition of Telecommunications service provided in La. R.S. 47:301(x) specifically excludes television audio and video programming services. La. R.S. 47:301(29)(x)(vii). The

definition also specifically excludes digital products delivered electronically, including but not limited to, software, music, and video. La. R.S. 47:301(29)(x)(ix). Thus, even if the PPV or VOD transactions in this case had tangible personal property as their true object, they would still be excluded from the definition of telecommunications services.

In addition to the foregoing, the Board finds that there is no genuine dispute that the satellite transactions are not taxable. Under the Telecommunications Act of 1996, a provider of direct-to-home satellite service “shall be exempt from the collection or remittance, or both, of any tax or fee imposed by any local taxing jurisdiction on direct-to-home satellite service.” Pub. L 104-104, title VI §602 Feb. 8, 1996, 110 Stat 56 (reproduced at 47 U.S.C. § 152, note). The federal statute defines “direct-to-home satellite service” as “programming transmitted or broadcast by satellite directly to the subscribers’ premises without the use of ground receiving or distribution equipment, except at the subscribers’ premises or in the uplink process to the satellite.” *Id.* The Petitioner established that some live PPV events are broadcast exclusively by satellite. Respondents did not make any argument or put forth any evidence to dispute Petitioner’s assertion that satellite-only broadcasts were protected from taxation by federal law. Accordingly, the Board holds that any transaction in which a live PPV event was broadcast to a customer exclusively by satellite was not subject to tax. Furthermore, Petitioner’s Exhibits O and P indicate that some portion of the liability shown on the Assessments from Washington and Acadia Parishes is attributable to non-taxable satellite transactions.<sup>9</sup>

In sum, the Board holds that the PPV and VOD transactions at issue in this case were not taxable sales or rentals of tangible personal property. The Petitioner has shown that they sell temporary authorization to view a program. The packetized data is useless without continuous authorization from the CAM. Whereas, the authorization has value even without the tangible data because PPV and VOD may be viewed direct from broadcast. Further, the customer’s access to the programming

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<sup>9</sup> There is no evidence in the record that identifies what portion of the liability is attributable to satellite transactions. It is not necessary to determine that amount, however, because the Board holds that the Assessments are invalid in their entirety.



is dependent on their continued cable subscription and connection to Petitioner's infrastructure. For these reasons, the Board holds that the Assessments are invalid. Accordingly, the Board will grant the Petitioner's Motion for Summary Judgment.

**Baton Rouge, Louisiana, on this 14<sup>th</sup> Day of March, 2024.**

**FOR THE BOARD:**



**LOCAL TAX JUDGE CADE R. COLE**