

RECEIVED

FEB 06 2017

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Docket No. 14-ALJ-17-0285-CC

Dish DBS Corporation f/k/a EchoStar, DBS Corp. and Affiliates Appellant,

v.

South Carolina Department of Revenue Respondent.

RECORD ON APPEAL

VOLUME VII

Burnet R. Maybank, III
Jim Rourke
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
PHONE: 803.771.8900
FACSIMILE: 803.253.8277
bmaybank@nexsenpruet.com
jrourke@nexsenpruet.com
Attorneys for Appellant Dish DBS
Corporation,
f/k/a EchoStar, DBS Corp., and Affiliates

Nicole M. Wooten, Counsel for Litigation
William J. Condon, Jr.
Managing Counsel for Litigation
Milton G. Kimpson
General Counsel for Litigation
P.O. Box 12265
Columbia, SC 29211
(803) 898-1826
Nicole.Wooten@dor.sc.gov
Attorneys for Respondent
South Carolina Department of Revenue

INDEX

ORDERS

1.	Amended Final Order filed July 11, 2016	5
2.	Final Order from the Administrative Law Court, dated May 20, 2016	31
3.	Order Denying Motion in Limine to Exclude Stipulation and Court Transcripts filed April 21, 2015;	57
4.	Order Denying Motion in Limine to Strike Proposed Expert Witness filed March 25, 2015;	59
5.	Order Denying Cross Motions for Summary Judgment filed February 10, 2015;	62
6.	Amended Final Order and Decision from the Administrative Law Court in <u>DIRECTV, Inc. & Subsidiaries v. S.C. Dept of Rev.</u> , Docket No. 14-ALJ-17-0158-CC (Appellate Case No. 2015-01509) (C.J. Anderson), dated June 12, 2015	73

PLEADINGS

7.	Appellant's Motion for Reconsideration under the ALC Rule 29(D) and/or to Alter or Amend under SCRCF Rule 59(e) filed May 31, 2016;	96
8.	Respondent's Response to Appellant's Motion for Reconsideration under the ALC Rule 29(D) and/or to Alter or Amend under SCRCF Rule 59(e) filed June 10, 2016;	122
9.	Appellant's Motion in Limine to Exclude Stipulation and Court Transcripts and Memorandum of Law in Support filed March 12, 2015;	143
10.	Respondent's Response in Opposition to Appellant's Motion in Limine to Exclude Stipulation and Court Transcripts filed March 23, 2015;	161
11.	Appellant's Motion in Limine and Memorandum in Law in Support of Motion in Limine to Strike Proposed Expert Witness from South Carolina Department of Revenue's Witness List filed March 5, 2015; ..	175
12.	Respondent's Response in Opposition to Appellant's Motion in Limine to Strike Proposed Expert Witness from South Carolina Department of Revenue's Witness List;	192

13.	Appellant’s Motion for Summary Judgment filed January 6, 2015;	200
14.	Respondent’s Reply in Opposition to Appellant’s Motion for Summary Judgment and Cross Motion for Summary Judgment filed January 27, 2015;	296
15.	Appellant’s Reply to Department’s Cross Motion for Summary Judgment filed January 30, 2015;	378
16.	Notice of Appeal filed August 8, 2016;	410

TRANSCRIPT

17.	Transcript of Administrative Law Court Hearing, September 23-25, 2015;	439
-----	--	-----

EXHIBITS AND OTHER MATERIALS OR DOCUMENTS

18.	Petitioner’s Exhibit 1 - 2005 Original SC Corporate and License Fee Return	1015
19.	Petitioner’s Exhibit 2 - 2006 Original SC Corporate and License Fee Return	1027
20.	Petitioner’s Exhibit 3 - 2007 Amended SC Corporate and License Fee Return	1040
21.	Petitioner’s Exhibit 4 - 2007 Second Amended SC Corporate and License Fee Return	1047
22.	Petitioner’s Exhibit 5 - 2008 Original SC Corporate and License Fee Return	1062
23.	Petitioner’s Exhibit 6 - 2008 Amended SC Corporate and License Fee Return	1077
24.	Petitioner’s Exhibit 7 - 2008 Second Amended SC Corporate and License Fee Return	1087
25.	Petitioner’s Exhibit 8 - 2008 Third Amended SC Corporate and License Fee Return	1095
26.	Petitioner’s Exhibit 9 - 2009 Original SC Corporate and License Fee Return	1105
27.	Petitioner’s Exhibit 10 - 2009 Amended SC Corporate and License Fee Return	1110

28.	Petitioner's Exhibit 11 - 2010 Original SC Corporate and License Fee Return	1122
29.	Petitioner's Exhibit 12 - 2010 Amended SC Corporate and License Fee Return	1130
30.	Petitioner's Exhibit 13 - 2010 Sales Support Spreadsheet	1151
31.	Petitioner's Exhibit 14 - 2009 Sales Support Spreadsheet	1191
32.	Petitioner's Exhibit 15 - 2008 Sales Support Spreadsheet	1219
33.	Petitioner's Exhibit 16 - 2007 Sales Support Spreadsheet	1230
34.	Petitioner's Exhibit 17 - 2006 Sales Support Spreadsheet	1245
35.	Petitioner's Exhibit 18 - 2005 Sales Support Spreadsheet	1256
36.	Petitioner's Exhibit 19 - Dish Network 2010 Form 10-K	1273
37.	Petitioner's Exhibit 20 - Dish Network 2009 Form 10-K	1426
38.	Petitioner's Exhibit 21 - Dish Network 2008 Form 10-K	1579
39.	Petitioner's Exhibit 22 - Dish Network 2007 Form 10-K	1732
40.	Petitioner's Exhibit 23 - Echostar Communications 2006 Form 10-K	1875
41.	Petitioner's Exhibit 24 - Echostar Communications 2005 Form 10-K	2027
42.	Petitioner's Exhibit 25 - Dish DBS 2010 Form 10-K	2192
43.	Petitioner's Exhibit 26 - Dish DBS 2009 Form 10-K	2381
44.	Petitioner's Exhibit 27 - Dish DBS 2008 Form 10-K	2539
45.	Petitioner's Exhibit 28 - Dish DBS 2007 Form 10-K	2665
46.	Petitioner's Exhibit 29 - Dish DBS 2006 Form 10-K	2779
47.	Petitioner's Exhibit 30 - Dish DBS 2005 Form 10-K	2895
48.	Petitioner's Exhibit 31 - Rex Povenmire Resume	3025
49.	Petitioner's Exhibit 32 - Ray Stevens Resume	3028

50.	Petitioner's Exhibit 33 - Matthew Sheers Resume	3033
51.	Petitioner's Exhibit 34 - Customer Invoices	3036
52.	Petitioner's Exhibit 35 - Cost Summary based on Tax Returns 2005 to 2010	3046
53.	Respondent's Exhibit 1 - Summary Sheet of Tax Returns	3052
54.	Respondent's Exhibit 2 - Audit Report	3053
55.	Respondent's Exhibit 3 - US Census Data	3075
56.	Respondent's Exhibit 4 - Department Determination dated May 13, 2014	3077
57.	Respondent's Exhibit 5 - CV of Dr. Glenn W. Harrison	3084
58.	Respondent's Exhibit 6 - CV of Prof. John A. Swain	3100
59.	Respondent's Exhibit 7 - BNA, Tax Management Multistate Tax Portfolios: SC Corporate Income Tax: (S-158,2280:0510d-2280:0510e)	3109
60.	Respondent's Exhibit 8 - Uniform Division of Income for Tax Purposes Act	3114
61.	Respondent's Exhibit 9 - Excerpt from the Dept's Corporate Tax Manual	3128
62.	Respondent's Exhibit 10 - I-D-214 Re: Income Tax (April 15, 1976)	3133
63.	Respondent's Exhibit 11 - Index of Record Submitted in <u>Lockwood Greene</u>	3134
64.	Respondent's Exhibit 12 - Minutes of Meeting of SCTC on August 24, 1977 and adopted Rule of Construction	3135
65.	Respondent's Exhibit 13 - Dish DBS subscriber contract	3137
66.	Respondent's Exhibit 14 - Dish DBS' Request for Contested Hearing	3145
67.	Certificate of Counsel	3147

Table of Contents

EHOSTAR DBS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued

EchoStar VII. EchoStar VII, which currently operates at the 119 degree orbital location, was designed to operate 32 transponders at approximately 120 watts per channel, switchable to 16 transponders operating at approximately 240 watts per channel. EchoStar VII also includes spot beam technology. During 2004, EchoStar VII lost a solar array circuit. EchoStar VII was designed with 24 solar array circuits and needs 23 for the spacecraft to be fully operational at end of life. While this anomaly is not expected to reduce the estimated useful life of the satellite to less than 12 years and has not impacted commercial operation of the satellite to date, an investigation of the anomaly is continuing. On March 17, 2006, a receiver on the satellite failed. Service was restored through a spare receiver. An investigation of the anomaly has commenced. Until the root causes of these anomalies are finally determined, there can be no assurance future anomalies will not cause further losses which could impact commercial operation of the satellite.

EchoStar VIII. EchoStar VIII, which currently operates at the 110 degree orbital location, was designed to operate 32 transponders at approximately 120 watts per channel, switchable to 16 transponders operating at approximately 240 watts per channel. EchoStar VIII also includes spot-beam technology. During January 2005, one of the computer components in its control electronics experienced an anomaly. The processors were successfully reset during April 2005, restoring full redundancy in the spacecraft control electronics. During July 2005, a thruster experienced a “bubble” event in a propellant line which caused improper pointing of the satellite resulting in a loss of service. Service was restored within several hours and the thruster is currently operating normally. During February 2005, EchoStar VIII lost a solar array string, reducing solar array power to approximately 99% of its original capacity. Until the root cause of these anomalies are determined, there can be no assurance that a repeat of the July 2005 anomaly, or other anomalies, will not cause further losses which could materially impact its commercial operation, or result in a total loss of the satellite. These and other anomalies previously disclosed have not reduced the 12-year estimated useful life of the satellite. We depend on EchoStar VIII to provide local channels to over 40 markets at least until such time as our EchoStar X satellite has commenced commercial operation, which is currently expected during second quarter 2006. In the event that EchoStar VIII experienced a total or substantial failure, we could transmit many, but not all, of those channels from other in-orbit satellites.

EchoStar IX. EchoStar IX, which currently operates at the 121 degree orbital location, was designed to operate 32 Ku-band transponders at approximately 110 watts per channel, along with transponders that can provide services in Ka-Band (a “Ka-band payload”). EchoStar IX provides expanded video and audio channels to DISH Network subscribers who install a specially-designed dish. The Ka-band spectrum is being used to test and verify potential future broadband initiatives and to implement those services. The satellite also includes a C-band payload which is owned by a third party.

EchoStar X. EchoStar X, a DBS satellite which can operate up to 49 spot beams using up to 42 active 140 watt TWTAs, was launched on February 15, 2006. EchoStar X is owned by EOC a direct subsidiary of EchoStar and our parent company. Assuming successful completion of in-orbit testing, the satellite is expected to commence commercial operations during the second quarter of 2006 at the 110 degree orbital location. The spot beams on EchoStar X are designed to increase the number of markets where we can offer local channels by satellite, including high definition local channels.

EchoStar XII. EchoStar XII, previously known as Rainbow 1, currently operates at the 61.5 degree orbital location. This direct broadcast satellite, which was purchased in November 2005 from Rainbow DBS Co., a subsidiary of Cablevision Systems Corporation, was designed to provide all CONUS, all Spot Beam, or a mixture of CONUS and Spot Beam coverage. In the all CONUS configuration, the spacecraft can operate 13 transponders (26 TWTAs) at 270 watts per channel. In the all Spot Beam mode, the spacecraft can operate up to 22 spot beams using a combination of 135 and 65 watt TWTAs. We are currently using the payload in the all CONUS configuration.

EchoStar XII experienced one north solar array circuit failure during May 2005 and one south solar array circuit failure during September 2004. The south solar array circuit has since partially recovered. The reason for the failures is unknown, but believed to be caused by an internal electrical short circuit. While this anomaly is not expected to reduce the remaining useful life of the satellite to less than 10 years and has not impacted commercial operation of the satellite to date, an investigation of the anomaly is continuing. Until the root causes are finally determined, there can be no assurance future anomalies will not cause further losses, which could impact commercial operation of the satellite.

SFAS 144 requires a long-lived asset or asset group to be tested for recoverability whenever events or changes in circumstance indicate that its carrying amount may not be recoverable. Based on the guidance under SFAS 144, we evaluate our satellite fleet for recoverability as an asset group. While certain of the anomalies discussed above, and previously disclosed, may be considered to represent a significant adverse change in the physical condition of an individual satellite, based on the redundancy designed within each satellite and considering the asset grouping, these

Table of Contents

EHOSTAR DBS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued

anomalies (none of which caused a loss of service for an extended period) are not considered to be significant events that would require evaluation for impairment recognition pursuant to the guidance under SFAS 144. Should any one satellite be abandoned or determined to have no service potential, the net carrying amount would be written off.

5. Long-Term Debt*9 1/8% Senior Notes due 2009*

During 2003, we redeemed \$245.0 million of the original \$700.0 million principal amount of our 9 1/8% Senior Notes due 2009. In addition, during 2004 and 2005, we repurchased in open market transactions approximately \$8.8 million and \$4.2 million principal amounts of these notes, respectively. As of December 31, 2005, the outstanding principal amount was approximately \$442.0 million.

Effective February 17, 2006, in accordance with the terms of the indenture governing the notes, the remaining principal amount of the notes of approximately \$442.0 million was redeemed at 104.563% of the principal amount, for a total of approximately \$462.1 million (see Note 15). The premium paid of approximately \$20.1 million, along with unamortized debt issuance costs of approximately \$2.8 million, were recorded as charges to earnings in February 2006. As a portion of the 9 1/8% Senior Notes remained outstanding as of December 31, 2005, we were subject to the terms of the related indentures until the time the 9 1/8% Senior Notes were fully redeemed.

Floating Rate Senior Notes due 2008

During the fourth quarter of 2003, we sold \$500.0 million principal amount of our Floating Rate Senior Notes which mature October 1, 2008. Interest accrues at a floating rate based on the three month LIBOR plus 3.25%, and is payable quarterly in cash in arrears on January 1, April 1, July 1 and October 1 of each year, commencing January 1, 2004. The interest rate at December 31, 2005 was 7.78%. The proceeds, along with proceeds from the 5 3/4% and 6 3/8% Senior Notes, were used primarily to repurchase or redeem all or a portion of certain then outstanding higher interest rate notes and for general corporate purposes.

The Floating Rate Senior Notes will be redeemable, in whole or in part, at any time beginning October 1, 2005 at redemption prices decreasing from 102% during the year commencing October 1, 2005 to 100% on or after October 1, 2007. Prior to October 1, 2005, we also could have redeemed up to 35% of each of the Floating Rate Senior Notes at premiums specified in the indenture with the net cash proceeds from certain equity offerings or capital contributions.

The Floating Rate Senior Notes are:

- general unsecured senior obligations of EDDBS;
- ranked equally in right of payment with all of EDDBS' and the guarantors' existing and future unsecured senior debt;
- ranked effectively junior to our and the guarantors' current and future secured senior indebtedness up to the value of the collateral securing such indebtedness.

The indenture related to our Floating Rate Senior Notes (the "Floating Rate Senior Notes Indenture") contains restrictive covenants that, among other things, impose limitations on the ability of EDDBS and its restricted subsidiaries to:

- incur additional indebtedness or enter into sale and leaseback transactions;
- pay dividends or make distribution on EDDBS' capital stock or repurchase EDDBS' capital stock;
- make certain investments;
- create liens;
- enter into transactions with affiliates;
- merge or consolidate with another company; and
- transfer and sell assets.

In the event of a change of control, as defined in the related indenture, we would be required to make an offer to repurchase all or any part of a holder's Floating Rate Senior Notes at a purchase price equal to 101% of the aggregate principal amount thereof, together with accrued and unpaid interest thereon, to the date of repurchase.

F-23

Table of Contents**ECHOSTAR DBS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued*****5 3/4% Senior Notes due 2008***

During the fourth quarter of 2003, we sold \$1.0 billion principal amount of our 5 3/4% Senior Notes which mature October 1, 2008. Interest accrues at an annual rate of 5 3/4% and is payable semi-annually in cash in arrears on April 1 and October 1 of each year, commencing April 1, 2004. The proceeds, along with proceeds from the Floating Rate Senior Notes and the 6 3/8% Senior Notes, were used primarily to repurchase or redeem all or a portion of certain then outstanding higher interest rate notes and for general corporate purposes.

The 5 3/4% Senior Notes will be redeemable, in whole or in part, at any time at a redemption price equal to 100% of their principal amount plus a "make-whole" premium, as defined in the related indenture, together with accrued and unpaid interest. Prior to October 1, 2006, we may also redeem up to 35% of each of the 5 3/4% Senior Notes at specified premiums with the net cash proceeds from certain equity offerings or capital contributions.

The 5 3/4% Senior Notes are:

- general unsecured senior obligations of EDBS;
- ranked equally in right of payment with all of EDBS' and the guarantors' existing and future unsecured senior debt;
- ranked effectively junior to our and the guarantors' current and future secured senior indebtedness up to the value of the collateral securing such indebtedness.

The indenture related to the 5 3/4% Senior Notes (the "5 3/4% Senior Notes Indenture") contains restrictive covenants that, among other things, impose limitations on the ability of EDBS and its restricted subsidiaries to:

- incur additional indebtedness or enter into sale and leaseback transactions;
- pay dividends or make distribution on EDBS' capital stock or repurchase EDBS' capital stock;
- make certain investments;
- create liens;
- enter into transactions with affiliates;
- merge or consolidate with another company; and
- transfer and sell assets.

In the event of a change of control, as defined in the related indenture, we would be required to make an offer to repurchase all or any part of a holder's 5 3/4% Senior Notes at a purchase price equal to 101% of the aggregate principal amount thereof, together with accrued and unpaid interest thereon, to the date of repurchase.

6 3/8% Senior Notes due 2011

During the fourth quarter of 2003, we sold \$1.0 billion principal amount of our 6 3/8% Senior Notes which mature October 1, 2011. Interest accrues at an annual rate of 6 3/8% and is payable semi-annually in cash in arrears on April 1 and October 1 of each year, commencing April 1, 2004. The proceeds, along with proceeds from the Floating Rate Senior Notes and the 5 3/4% Senior Notes, were used primarily to repurchase or redeem all or a portion of certain then outstanding higher interest rate notes and for general corporate purposes.

The 6 3/8% Senior Notes will be redeemable, in whole or in part, at any time at a redemption price equal to 100% of their principal amount plus a "make-whole" premium, as defined in the related indenture, together with accrued and unpaid interest. Prior to October 1, 2006, we may also redeem up to 35% of each of the 6 3/8% Senior Notes at specified premiums with the net cash proceeds from certain equity offerings or capital contributions.

The 6 3/8% Senior Notes are:

- general unsecured senior obligations of EDBS;
- ranked equally in right of payment with all of EDBS' and the guarantors' existing and future unsecured senior debt;
- ranked effectively junior to our and the guarantors' current and future secured senior indebtedness up to the value of

the collateral securing such indebtedness.

F-24

Table of Contents

EHOSTAR DBS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued

The indenture related to the 6 3/8% Senior Notes (the "6 3/8% Senior Notes Indenture") contains restrictive covenants that, among other things, impose limitations on the ability of EDBS and its restricted subsidiaries to:

- incur additional indebtedness or enter into sale and leaseback transactions;
- pay dividends or make distribution on EDBS' capital stock or repurchase EDBS' capital stock;
- make certain investments;
- create liens;
- enter into transactions with affiliates;
- merge or consolidate with another company; and
- transfer and sell assets.

In the event of a change of control, as defined in the related indenture, we would be required to make an offer to repurchase all or any part of a holder's 6 3/8% Senior Notes at a purchase price equal to 101% of the aggregate principal amount thereof, together with accrued and unpaid interest thereon, to the date of repurchase.

6 5/8% Senior Notes due 2014

During the fourth quarter of 2004, we sold \$1.0 billion principal amount of our 6 5/8% Senior Notes which mature October 1, 2014. Interest accrues at an annual rate of 6 5/8% and is payable semi-annually in cash in arrears on April 1 and October 1 of each year, commencing April 1, 2005. The proceeds, together with available cash, were used to redeem certain of our then outstanding higher interest rate notes.

The 6 5/8% Senior Notes will be redeemable, in whole or in part, at any time at a redemption price equal to 100% of their principal amount plus a "make-whole" premium, as defined in the related indenture, together with accrued and unpaid interest. Prior to October 1, 2007, we may also redeem up to 35% of each of the 6 5/8% Senior Notes at specified premiums with the net cash proceeds from certain equity offerings or capital contributions.

The 6 5/8% Senior Notes are:

- general unsecured senior obligations of EDBS;
- ranked equally in right of payment with all of EDBS' and the guarantors' existing and future unsecured senior debt;
- ranked effectively junior to our and the guarantors' current and future secured senior indebtedness up to the value of the collateral securing such indebtedness.

The indenture related to the 6-5/8% Senior Notes (the "6 5/8% Senior Notes Indenture") contains restrictive covenants that, among other things, impose limitations on the ability of EDBS and its restricted subsidiaries to:

- incur additional indebtedness or enter into sale and leaseback transactions;
- pay dividends or make distribution on EDBS' capital stock or repurchase EDBS' capital stock;
- make certain investments;
- create liens;
- enter into transactions with affiliates;
- merge or consolidate with another company; and
- transfer and sell assets.

In the event of a change of control, as defined in the related indenture, we would be required to make an offer to repurchase all or any part of a holder's 6 5/8% Senior Notes at a purchase price equal to 101% of the aggregate principal amount thereof, together with accrued and unpaid interest thereon, to the date of repurchase.

Table of Contents

EHOSTAR DBS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued

Capital Lease Obligations, Mortgages and Other Notes Payable

Capital lease obligations, mortgages and other notes payable consists of the following:

	<u>As of December 31,</u>	
	<u>2005</u>	<u>2004</u>
	(In thousands)	
Satellites financed under capital lease obligations	\$438,062	\$286,605
8% note payable for EchoStar VII satellite vendor financing, payable over 13 years from launch	12,735	13,549
8% note payable for EchoStar IX satellite vendor financing, payable over 14 years from launch	9,141	9,587
Mortgages and other unsecured notes payable due in installments through 2017 with interest rates ranging from approximately 2% to 13%	<u>7,665</u>	<u>9,798</u>
Total	467,603	319,539
Less current portion	<u>(36,380)</u>	<u>(33,645)</u>
Capital lease obligations, mortgages and other notes payable, net of current portion	<u>\$431,223</u>	<u>\$285,894</u>

Capital Lease Obligations

During 2003, we entered into a satellite service agreement with SES Americom for all of the capacity on a Fixed Satellite Service ("FSS") satellite, AMC-15, which successfully launched during the fourth quarter of 2004 and commenced commercial operation in January 2005. The ten-year satellite service agreement for this satellite is renewable by us on a year to year basis following the initial term, and provides us with certain rights to replacement satellites. We are required to make monthly payments to SES Americom for this satellite over the ten year satellite service agreement beginning in 2005. In accordance with Statement of Financial Accounting Standards No. 13 ("SFAS 13"), we have accounted for the satellite component of this agreement as a capital lease.

During 2004, we entered into a satellite service agreement for capacity on another FSS satellite, AMC-16, which launched during the fourth quarter of 2004 and commenced commercial operation during the first quarter of 2005. The ten-year satellite service agreement for this satellite is renewable by us on a year to year basis following the initial term, and provides us with certain rights to replacement satellites. We are required to make monthly payments to SES Americom for this satellite over the ten year satellite service agreement beginning in 2005. In accordance with SFAS 13, we have accounted for the satellite component of this agreement as a capital lease.

As of December 31, 2005 and 2004, we had approximately \$551.6 million and \$330.8 million capitalized for the estimated fair value of satellites acquired under capital leases included in "Property and equipment, net," respectively, with related accumulated depreciation of approximately \$53.3 million and zero, respectively. In our Consolidated Statements of Operations and Comprehensive Income (Loss), we recognized \$53.3 million in depreciation expense on satellites acquired under capital lease agreements during the year ended December 31, 2005. During 2004, we did not recognize any depreciation on the satellites acquired under these capital leases.

Table of Contents

EHOSTAR DBS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued

Future minimum lease payments under these capital lease obligations, together with the present value of the net minimum lease payments as of December 31, 2005 are as follows:

For the Year Ending December 31,	
2006	\$ 86,351
2007	86,351
2008	86,351
2009	86,351
2010	86,351
Thereafter	<u>347,919</u>
Total minimum lease payments	779,674
Less: Amount representing lease of the orbital location and estimated executory costs (primarily insurance and maintenance) including profit thereon, included in total minimum lease payments	<u>(140,999)</u>
Net minimum lease payments	638,675
Less: Amount representing interest	<u>(200,613)</u>
Present value of net minimum lease payments	438,062
Less: Current portion	<u>(31,094)</u>
Long-term portion of capital lease obligations	<u>\$ 406,968</u>

Future maturities of our outstanding long-term debt, including the current portion, are summarized as follows:

	Payments due by period				
	Total	2006	2007-2008 (In thousands)	2009-2010	Thereafter
Long-term debt	\$3,941,964	\$441,964	\$1,500,000	\$ —	\$2,000,000
Capital lease obligations, mortgages and other notes payable	<u>467,602</u>	<u>36,380</u>	<u>78,713</u>	<u>93,202</u>	<u>259,307</u>
Total	<u>\$4,409,566</u>	<u>\$478,344</u>	<u>\$1,578,713</u>	<u>\$ 93,202</u>	<u>\$2,259,307</u>

Interest on Long-Term Debt

We also have periodic cash interest requirements for our outstanding long-term debt securities, capital lease obligations, mortgages and other notes payable. Future maturities of these requirements are summarized as follows:

	Payments due by period				
	Total	2006	2007-2008 (In thousands)	2009-2010	Thereafter
Long-term debt	\$1,273,103	\$231,553	\$452,800	\$260,000	\$328,750
Capital lease obligations, mortgages and other notes payable	<u>212,023</u>	<u>38,869</u>	<u>68,343</u>	<u>53,848</u>	<u>50,963</u>
Total	<u>\$1,485,126</u>	<u>\$270,422</u>	<u>\$521,143</u>	<u>\$313,848</u>	<u>\$379,713</u>

Interest accrues on our Floating Rate Senior Notes due 2008 based on the three month LIBOR plus 3.25%. The interest rate as of December 31, 2005, or 7.78%, was used in the table above.

Guarantees

The repayment obligations of EDBS under the vendor financings for EchoStar IV and EchoStar Orbital Corporation under the vendor financing for EchoStar VII are guaranteed by EchoStar. The maximum potential future payments under these guarantees are equal to the respective amounts of outstanding principal and accrued interest.

Table of Contents**EHOSTAR DBS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued****6. Income Taxes**

As of December 31, 2005, we had net operating loss carryforwards (“NOL’s”) for federal income tax purposes of approximately \$1.659 billion and tax benefits related to credit and other carryforwards of approximately \$29.0 million. The NOL’s begin to expire in the year 2011 and credit and other carryforwards will begin to expire in the year 2006.

Our income tax policy is to record the estimated future tax effects of temporary differences between the tax bases of assets and liabilities and amounts reported in our Consolidated Balance Sheets, as well as probable operating loss, tax credit and other carryforwards. We follow the guidelines set forth in SFAS 109 regarding the recoverability of any tax assets recorded on the balance sheet and provide any necessary valuation allowances as required. In accordance with SFAS 109, we periodically evaluate our need for a valuation allowance. Determining necessary valuation allowances requires us to make assessments about historical financial information as well as the timing of future events, including the probability of expected future taxable income and available tax planning opportunities. We had income before taxes for the years ended December 31, 2005, 2004, and 2003. During the second quarter of 2005, we concluded the recoverability of certain of our deferred tax assets was more likely than not and accordingly reversed the portion of the valuation allowance which was no longer required. As of December 31, 2005, there remains approximately \$11.4 million of valuation allowance which relates to deferred tax assets for credit and other carryforwards which begin to expire in the year 2006.

During 2005, we decreased our deferred tax valuation allowance by approximately \$566.2 million with \$472.3 million of the reversal charged to the income statement and \$93.9 million recorded to equity. Reversal of our recorded valuation allowance for those deferred tax assets that we believe are more likely than not to be realizable resulted in an approximate \$185.2 million credit to our provision for income taxes. We also recorded valuation allowance activity of \$287.1 million throughout 2005 primarily related to the generation of taxable income. As a result, net income increased by corresponding amounts. The amount reversed to equity during the year related to stock compensation and unrealized gains and losses. We recorded this reversal to “Additional paid-in capital” and “Other comprehensive income (loss).”

The Federal NOL includes amounts related to tax deductions totaling approximately \$273.3 million for exercised stock options. The tax benefit of these deductions has been allocated directly to contributed capital.

Stock option compensation expenses related to the 1999 Incentive Plan, for which an estimated deferred tax benefit was previously recorded exceeded the actual tax deductions allowed during 2005 and 2004. Tax charges associated with the reversal of the prior tax benefit have been allocated to “Additional paid-in capital” in accordance with APB 25. During 2005 and 2004, charges of \$12.9 million and \$2.5 million, respectively, were made to additional paid-in capital.

EDBS and its domestic subsidiaries join with EchoStar in filing U.S. consolidated federal income tax returns and, in some states, combined or consolidated returns. The federal and state income tax provisions or benefits recorded by EDBS are generally those that would have been recorded if EDBS and its domestic subsidiaries had filed returns as a consolidated group independent of EchoStar. Cash is due and paid to EchoStar based on amounts that would be payable based on EDBS consolidated or combined group filings. Amounts are receivable from EchoStar on a basis similar to when they would be receivable from the IRS or other state taxing authorities. The amounts payable as of December 31, 2005, 2004 and 2003 were \$20.3 million, \$2.7 million, and \$0.5 million, respectively.

Table of Contents

EHOSTAR DBS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued

The components of the (provision for) benefit from income taxes are as follows:

	For the Years Ended December 31,		
	2005	2004	2003
	(In thousands)		
Current (provision) benefit:			
Federal	\$ (18,908)	\$ (1,307)	\$ —
State	(15,364)	(6,421)	(12,175)
Foreign	(1,701)	(383)	(482)
	<u>(35,973)</u>	<u>(8,111)</u>	<u>(12,657)</u>
Deferred (provision) benefit:			
Federal	(319,304)	(103,001)	(114,632)
State	(9,754)	(6,719)	(7,756)
Decrease (increase) in valuation allowance	472,305	106,766	121,512
	<u>143,247</u>	<u>(2,954)</u>	<u>(876)</u>
Total benefit (provision)	<u>\$ 107,274</u>	<u>\$ (11,065)</u>	<u>\$ (13,533)</u>

The actual tax provisions for 2005, 2004 and 2003 reconcile to the amounts computed by applying the statutory Federal tax rate to income before taxes as follows:

	For the Years Ended December 31,		
	2005	2004	2003
	% of pre-tax (income)/loss		
Statutory rate	(35.0)	(35.0)	(35.0)
State income taxes, net of Federal benefit	(1.6)	(2.8)	(3.8)
Foreign taxes and income not U. S. taxable	(0.1)	(0.2)	0.6
Stock option compensation	(0.4)	(0.5)	(2.4)
Deferred tax asset adjustment for filed returns	1.9	0.6	—
Intangible amortization and other	(0.3)	(0.1)	0.1
Decrease (increase) in valuation allowance	45.9	34.4	36.4
Total benefit (provision) for income taxes	<u>10.4</u>	<u>(3.6)</u>	<u>(4.1)</u>

Table of Contents

EHOSTAR DBS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued

The temporary differences, which give rise to deferred tax assets and liabilities as of December 31, 2005 and 2004, are as follows:

	<u>As of December 31,</u>	
	<u>2005</u>	<u>2004</u>
	(In thousands)	
Deferred tax assets:		
NOL, credit and other carryforwards	\$ 593,028	\$ 858,571
Unrealized losses on investments	2,074	2,361
Accrued expenses	6,022	19,711
Stock compensation	2,249	16,001
Deferred revenue	51,481	68,896
Other	23,360	9,664
Total deferred tax assets	<u>678,214</u>	<u>975,204</u>
Valuation allowance	<u>(11,358)</u>	<u>(577,548)</u>
Deferred tax asset after valuation allowance	<u>666,856</u>	<u>397,656</u>
Deferred tax liabilities:		
Equity method investments	(19,566)	(18,455)
Depreciation and amortization	(422,140)	(386,694)
State taxes net of federal tax effect	<u>(25,026)</u>	<u>(16,381)</u>
Total deferred tax liabilities	<u>(466,732)</u>	<u>(421,530)</u>
Net deferred tax asset (liability)	<u>\$ 200,124</u>	<u>\$ (23,874)</u>
Current portion of net deferred tax asset (liability)	\$ 416,787	\$ 44,974
Noncurrent portion of net deferred tax asset (liability)	<u>(216,663)</u>	<u>(68,848)</u>
Total net deferred tax asset (liability)	<u>\$ 200,124</u>	<u>\$ (23,874)</u>

7. Stock Compensation Plans**Stock Incentive Plans**

EchoStar has adopted stock incentive plans to attract and retain officers, directors and key employees. EchoStar currently has 80.0 million shares of its Class A common stock reserved for granting awards under its 1995 Stock Incentive Plan and an additional 80.0 million shares of its Class A common stock for granting awards under its 1999 Stock Incentive Plan. In general, stock options granted through December 31, 2005 have included exercise prices not less than the fair value of EchoStar's Class A common stock at the date of grant, a maximum term of ten years and vest, as determined by EchoStar's Board of Directors, generally at the rate of 20% per year.

During 1999, EchoStar adopted an incentive plan under its 1995 Stock Incentive Plan, which provided certain key employees a contingent incentive including stock options and cash. The payment of these incentives was contingent upon the achievement of certain financial and other goals of EchoStar. EchoStar met certain of these goals during 1999. Accordingly, in 1999, we recorded approximately \$178.8 million of deferred compensation related to post-grant appreciation of options to purchase approximately 4.2 million shares. The related deferred compensation, net of forfeitures, was recognized over the five-year option vesting period. During the years ended December 31, 2004 and 2003, we recognized expense of \$1.2 million and \$3.5 million, respectively, under the 1999 incentive plan. Subsequent to December 31, 2004, there was no remaining deferred compensation to be recognized under this plan.

Effective January 26, 2005, EchoStar adopted a long-term, performance-based stock incentive plan (the "2005 LTIP") within the terms of its 1999 Stock Incentive Plan to provide incentive to its executive officers and certain other key employees upon achievement of specified long-term business objectives. Employees participating in the 2005 LTIP may elect to receive a one-time award of (i) an option to acquire a specified number of shares of EchoStar's Class A common stock priced at market value on the date of the awards, (ii) rights to acquire for no additional consideration a specified smaller number of shares of EchoStar's Class A common stock; or (iii) a corresponding combination of a lesser number of option shares and such rights to acquire EchoStar's Class A common stock. The options and rights will vest at a varying rate over a seven year period; provided, however, that none of the options or rights will vest if EchoStar fails to achieve the specified long-term performance goal. We will record the related compensation if achievement of this performance goal becomes probable.

F-30

Table of Contents

EHOSTAR DBS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued

Options to purchase 6.2 million shares pursuant to a long-term incentive plan under EchoStar's 1999 Stock Incentive Plan (the "1999 LTIP"), and 4.8 million shares pursuant to the 2005 LTIP were outstanding as of December 31, 2005. These options were granted with exercise prices at least equal to the market value of the underlying shares on the dates they were issued. The weighted-average exercise price of these options is \$8.83 under the 1999 LTIP and \$29.40 under the 2005 LTIP. The weighted average fair value of the options granted during 2005 pursuant to these plans was \$14.06. Further, pursuant to the 2005 LTIP, there were also approximately 533,000 outstanding Restricted Performance Units as of December 31, 2005 with a weighted average grant date fair value of \$29.33. Vesting of these options and Restricted Performance Units is contingent upon meeting certain longer-term goals which have not yet been achieved. Consequently, no compensation was recorded during the year ended December 31, 2005 related to these long-term options and Restricted Performance Units. We will record the related compensation upon the achievement of the performance goals, if ever. In accordance with SFAS 123 (R), such compensation, if recorded, would result in total non-cash, stock-based compensation expense of approximately \$126.8 million, which would be recognized ratably over the vesting period or expensed immediately, if fully vested, in our Consolidated Statements of Operations and Comprehensive Income (Loss).

A summary of our stock option activity for the years ended December 31, 2005, 2004 and 2003 is as follows:

	2005		2004		2003	
	Options	Weighted-Average Exercise Price	Options	Weighted-Average Exercise Price	Options	Weighted-Average Exercise Price
Options outstanding, beginning of year	17,134,684	\$ 20.82	17,225,688	\$ 16.31	20,297,369	\$ 13.75
Granted	10,121,250	29.20	4,190,000	31.64	1,329,000	29.95
Exercised	(905,228)	30.08	(2,142,450)	6.62	(2,966,987)	5.71
Forfeited and cancelled	(2,045,755)	25.82	(2,138,554)	19.87	(1,433,694)	14.68
Options outstanding, end of year	<u>24,304,951</u>	24.36	<u>17,134,684</u>	20.82	<u>17,225,688</u>	16.31
Exercisable at end of year	<u>6,409,601</u>	29.27	<u>5,334,284</u>	25.33	<u>5,333,838</u>	18.79

Exercise prices for options outstanding as of December 31, 2005 are as follows:

	Options Outstanding			Options Exercisable	
	Number Outstanding as of December 31, 2005*	Weighted-Average Remaining Contractual Life	Weighted-Average Exercise Price	Number Exercisable as of December 31, 2005	Weighted-Average Exercise Price
\$ 2.12500 — \$ 3.00000	280,943	1.24	\$ 2.31	280,943	\$ 2.31
\$ 5.48625 — \$ 6.00000	6,128,335	3.02	6.00	944,335	6.00
\$10.20315 — \$19.17975	1,427,323	3.49	14.18	617,323	12.53
\$22.70325 — \$28.88000	2,894,500	8.68	27.53	1,644,500	27.37
\$29.25000 — \$39.50000	12,379,850	8.87	30.64	1,860,500	33.45
\$48.75000 — \$52.75000	138,000	3.79	50.55	86,000	50.15
<u>\$60.12500 — \$79.00000</u>	<u>1,056,000</u>	4.34	64.70	<u>976,000</u>	63.53
<u>\$ 2.12500 — \$79.00000</u>	<u>24,304,951</u>	6.75	24.36	<u>6,409,601</u>	29.27

* These amounts include approximately 6.2 million shares and 4.8 million shares outstanding pursuant to the 1999 LTIP and 2005 LTIP, respectively.

Table of Contents**EHOSTAR DBS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued****8. Employee Benefit Plans***Employee Stock Purchase Plan*

During 1997, EchoStar's Board of Directors and shareholders approved an employee stock purchase plan (the "ESPP"), effective beginning October 1, 1997. Under the ESPP, EchoStar is authorized to issue a total of 800,000 shares of its Class A common stock. Substantially all full-time employees who have been employed by EchoStar for at least one calendar quarter are eligible to participate in the ESPP. Employee stock purchases are made through payroll deductions. Under the terms of the ESPP, employees may not deduct an amount which would permit such employee to purchase EchoStar's capital stock under all of EchoStar's stock purchase plans at a rate which would exceed \$25,000 in fair value of capital stock in any one year. The purchase price of the stock is 85% of the closing price of EchoStar's Class A common stock on the last business day of each calendar quarter in which such shares of Class A common stock are deemed sold to an employee under the ESPP. The ESPP shall terminate upon the first to occur of (i) October 1, 2007 or (ii) the date on which the ESPP is terminated by EchoStar's Board of Directors. During 2005, 2004 and 2003 employees purchased approximately 97,000, 78,000, and 66,000 shares of EchoStar's Class A common stock through the ESPP, respectively.

401(k) Employee Savings Plan

EchoStar sponsors a 401(k) Employee Savings Plan (the "401(k) Plan") for eligible employees. Voluntary employee contributions to the 401(k) Plan may be matched 50% by EchoStar, subject to a maximum annual contribution by EchoStar of \$1,000 per employee. Forfeitures of unvested participant balances which are retained by the 401(k) Plan may be used to fund matching and discretionary contributions. Expense recognized related to matching 401(k) contributions, net of forfeitures, totaled approximately \$200 thousand during the year ended December 31, 2005. We did not recognize any expense related to matching 401(k) contributions during the year ended December 31, 2004, as 401(k) Plan forfeitures were sufficient to fund all of EchoStar's matching contributions. Expense recognized related to matching 401(k) contributions, net of forfeitures, totaled approximately \$632 thousand during the year ended December 31, 2003.

EchoStar also may make an annual discretionary contribution to the plan with approval by its Board of Directors, subject to the maximum deductible limit provided by the Internal Revenue Code of 1986, as amended. These contributions may be made in cash or in EchoStar's stock. Discretionary contributions, net of forfeitures, were approximately \$15.4 million, \$12.8 million, and \$15.4 million relating to the 401(k) Plan years ended December 31, 2005, 2004 and 2003, respectively.

Table of Contents

EHOSTAR DBS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued

9. Commitments and Contingencies*Commitments*

Future maturities of our contractual obligations are summarized as follows:

	Payments due by period				
	Total	2006	2007-2008 (In thousands)	2009-2010	Thereafter
Satellite-related obligations	\$1,819,054	\$135,138	\$307,370	\$258,560	\$1,117,986
Operating lease obligations	80,034	27,818	39,601	10,503	2,112
Purchase obligations	820,579	649,908	94,890	75,781	—
Total	\$2,719,667	\$812,864	\$441,861	\$344,844	\$1,120,098

Satellite-Related Obligations

Satellites under Construction. EchoStar entered into contracts to construct six new satellites. As discussed under "Organization and Legal Structure" above, these contracts are held in EOC II, a wholly owned subsidiary of ECC, and our affiliate, and accordingly, future obligations for payment related to these satellites are not included in the table above.

During 2004, EchoStar entered into a contract for the construction of EchoStar XI, a Space Systems Loral FS1300 class DBS satellite. In connection with this agreement, EchoStar obtained an option for the construction of other additional satellites. Construction is expected to be completed during 2007. Future commitments related to this satellite are not included in the table above.

During 2005 and 2004, EchoStar entered into contracts for the construction of five additional SSL Ka and/or Ku expanded band satellites which are expected to be completed during 2008.

Satellites under Lease. In addition to our lease of the AMC-15 and AMC-16 satellites (see Note 5), we have also entered into satellite service agreements to lease capacity on four other satellites.

In connection with the SES Americom agreement for the lease of the AMC-15 satellite discussed under *Capital Lease Obligations* (see Note 5), we are currently leasing all of the capacity on an existing in-orbit FSS satellite, AMC-2, at the 85 degree orbital location. Our lease of this satellite is scheduled to continue through 2006. We have accounted for the AMC-2 satellite agreement as an operating lease.

During August 2003, we exercised our option under the SES Americom agreement for AMC-15 to also lease for an initial ten-year term all of the capacity on a new DBS satellite at an orbital location to be determined at a future date. In connection with this agreement, we prepaid \$20.9 million to SES Americom during 2004. We anticipate that this satellite will be launched during the second half of 2006.

During February 2004, we entered into a satellite service agreement for capacity on an FSS satellite which is planned for launch during the second half of 2006. In connection with this agreement, we prepaid \$55.0 million during 2004 and are required to make monthly payments for this satellite for the 15-year period following commencement of commercial operation. Future commitments related to this satellite are included in the table above.

During August 2003, we entered into a satellite service agreement for capacity on a Canadian DBS satellite at the 129 degree orbital location for an initial ten-year term. We anticipate that this satellite will be launched during 2008.

Table of Contents**EHOSTAR DBS CORPORATION**
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued

In certain circumstances the dates on which we are obligated to make these payments could be delayed. These amounts will increase when we commence payments for the launches of EchoStar XI and the Ka-band satellites, and would further increase to the extent we procure insurance for our satellites or contract for the construction, launch or lease of additional satellites.

Purchase Obligations

Our 2006 purchase obligations primarily consist of binding purchase orders for EchoStar receiver systems and related equipment, and for products and services related to the operation of our DISH Network. Our purchase obligations also include certain guaranteed fixed contractual commitments to purchase programming content.

Programming Contracts

In the normal course of business, we have also entered into numerous contracts to purchase programming content whereby our payment obligations are fully contingent on the number of subscribers to which we provide the respective content. These programming commitments are not included in the table above. The terms of our contracts typically range from one to ten years. Our programming expenses will continue to increase to the extent we are successful growing our subscriber base. Programming expenses are included in "Subscriber-related expenses" in the accompanying Consolidated Statements of Operations and Comprehensive Income (Loss).

Rent Expense

Total rent expense for operating leases approximated \$66.1 million, \$56.0 million and \$31.6 million in 2005, 2004 and 2003, respectively.

Patents and Intellectual Property

Many entities, including some of our competitors, now have and may in the future obtain patents and other intellectual property rights that cover or affect products or services directly or indirectly related to those that we offer. We may not be aware of all patents and other intellectual property rights that our products may potentially infringe. Damages in patent infringement cases can include a tripling of actual damages in certain cases. Further, we cannot estimate the extent to which we may be required in the future to obtain licenses with respect to patents held by others and the availability and cost of any such licenses. Various parties have asserted patent and other intellectual property rights with respect to components within our direct broadcast satellite system. We cannot be certain that these persons do not own the rights they claim, that our products do not infringe on these rights, that we would be able to obtain licenses from these persons on commercially reasonable terms or, if we were unable to obtain such licenses, that we would be able to redesign our products to avoid infringement.

*Contingencies**Distant Network Litigation*

Until July 1998, we obtained feeds of distant broadcast network channels (ABC, NBC, CBS and FOX) for distribution to our customers through PrimeTime 24. In December 1998, the United States District Court for the Southern District of Florida in Miami entered a nationwide permanent injunction requiring PrimeTime 24 to shut off distant network channels to many of its customers, and henceforth to sell those channels to consumers in accordance with the injunction.

In October 1998, we filed a declaratory judgment action against ABC, NBC, CBS and FOX in the United States District Court for the District of Colorado. We asked the Court to find that our method of providing distant network programming did not violate the Satellite Home Viewer Improvement Act ("SHVIA") and hence did not infringe the networks' copyrights. In November 1998, the networks and their affiliate association groups filed a complaint against us in Miami Federal Court alleging, among other things, copyright infringement. The Court combined the case that we filed in Colorado with the case in Miami and transferred it to the Miami Federal Court.

In February 1999, the networks filed a Motion for Temporary Restraining Order, Preliminary Injunction and Contempt Finding against DirecTV, Inc. in Miami related to the delivery of distant network channels to DirecTV customers by satellite. DirecTV settled that lawsuit with the networks. Under the terms of the settlement between DirecTV and the

Table of Contents**EHOSTAR DBS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued**

networks, some DirecTV customers were scheduled to lose access to their satellite-provided distant network channels by July 31, 1999, while other DirecTV customers were to be disconnected by December 31, 1999. Subsequently, substantially all providers of satellite-delivered network programming other than us agreed to this cut-off schedule, although we do not know if they adhered to this schedule.

In April 2002, we reached a private settlement with ABC, Inc., one of the plaintiffs in the litigation, and jointly filed a stipulation of dismissal. In November 2002, we reached a private settlement with NBC, another of the plaintiffs in the litigation and jointly filed a stipulation of dismissal. During March 2004, we reached a private settlement with CBS, another of the plaintiffs in the litigation and jointly filed a stipulation of dismissal. We have also reached private settlements with many independent stations and station groups. We were unable to reach a settlement with five of the original eight plaintiffs — FOX and the independent affiliate groups associated with each of the four networks.

A trial took place during April 2003 and the District Court issued a final judgment in June 2003. The District Court found that with one exception our current distant network qualification procedures comply with the law. We have revised our procedures to comply with the District Court's Order. Although the plaintiffs asked the District Court to enter an injunction precluding us from selling any local or distant network programming, the District Court refused. While the plaintiffs did not claim monetary damages and none were awarded, the plaintiffs were awarded approximately \$4.8 million in attorneys' fees. This amount is substantially less than the amount the plaintiffs sought. We asked the Court to reconsider the award and the Court has vacated the fee award. When the award was vacated, the District Court also allowed us an opportunity to conduct discovery concerning the amount of plaintiffs' requested fees. The parties have agreed to postpone discovery and an evidentiary hearing regarding attorneys' fees until after the Court of Appeals rules on the pending appeal of the Court's June 2003 final judgment. It is not possible to make an assessment of the probable outcome of plaintiffs' outstanding request for fees.

The District Court's injunction requires us to use a computer model to re-qualify, as of June 2003, all of our subscribers who receive ABC, NBC, CBS or FOX programming by satellite from a market other than the city in which the subscriber lives. The Court also invalidated all waivers historically provided by network stations. These waivers, which have been provided by stations for the past several years through a third party automated system, allow subscribers who believe the computer model improperly disqualified them for distant network channels to nonetheless receive those channels by satellite. Further, the District Court terminated the right of our grandfathered subscribers to continue to receive distant network channels.

We believe the District Court made a number of errors and appealed the decision. Plaintiffs cross-appealed. The Court of Appeals granted our request to stay the injunction until our appeal is decided. Oral arguments occurred during February 2004. It is not possible to predict how or when the Court of Appeals will rule on the merits of our appeal. On April 13, 2005, Plaintiffs filed a motion asking the Court of Appeals to vacate the stay of the injunction that was issued in August 2004. We responded on April 25, 2005. It is not possible to predict how or when the Court of Appeals will rule on Plaintiffs' motion to vacate the stay.

In the event the Court of Appeals upholds the injunction or lifts the stay as plaintiffs now request, and if we do not reach private settlement agreements with additional stations, we will attempt to assist subscribers in arranging alternative means to receive network channels, including migration to local channels by satellite where available, and free off air antenna offers in other markets. However, we cannot predict with any degree of certainty how many subscribers would cancel their primary DISH Network programming as a result of termination of their distant network channels. We could be required to terminate distant network programming to all subscribers in the event the plaintiffs prevail on their cross-appeal and we are permanently enjoined from delivering all distant network channels. Termination of distant network programming to subscribers would result, among other things, in a reduction in average monthly revenue per subscriber and a temporary increase in subscriber churn.

Table of Contents**EHOSTAR DBS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued***Superguide*

During 2000, Superguide Corp. ("Superguide") filed suit against us, DirecTV and others in the United States District Court for the Western District of North Carolina, Asheville Division, alleging infringement of United States Patent Nos. 5,038,211 (the '211 patent), 5,293,357 (the '357 patent) and 4,751,578 (the '578 patent) which relate to certain electronic program guide functions, including the use of electronic program guides to control VCRs. Superguide sought injunctive and declaratory relief and damages in an unspecified amount.

On summary judgment, the District Court ruled that none of the asserted patents were infringed by us. These rulings were appealed to the United States Court of Appeals for the Federal Circuit. During February 2004, the Federal Circuit affirmed in part and reversed in part the District Court's findings and remanded the case back to the District Court for further proceedings. In July 2005, SuperGuide indicated that it would no longer pursue infringement allegations with respect to the '211 and '357 patents and those patents have now been dismissed from the suit. We examined the '578 patent and believe that it is not infringed by any of our products or services. We will continue to vigorously defend this case. In the event that a Court ultimately determines that we infringe on any of the patents, we may be subject to substantial damages, which may include treble damages and/or an injunction that could require us to materially modify certain user-friendly electronic programming guide and related features that we currently offer to consumers. The case is stayed pending the District Court's ruling. A trial date has not been set. It is not possible to make an assessment of the probable outcome of the suit or to determine the extent of any potential liability or damages.

Broadcast Innovation, L.L.C.

In November of 2001, Broadcast Innovation, L.L.C. filed a lawsuit against us, DirecTV, Thomson Consumer Electronics and others in Federal District Court in Denver, Colorado. The suit alleges infringement of United States Patent Nos. 6,076,094 (the '094 patent) and 4,992,066 (the '066 patent). The '094 patent relates to certain methods and devices for transmitting and receiving data along with specific formatting information for the data. The '066 patent relates to certain methods and devices for providing the scrambling circuitry for a pay television system on removable cards. We examined these patents and believe that they are not infringed by any of our products or services. Subsequently, DirecTV and Thomson settled with Broadcast Innovation leaving us as the only defendant.

During January 2004, the judge issued an order finding the '066 patent invalid. In August of 2004, the Court ruled the '094 invalid in a parallel case filed by Broadcast Innovation against Charter and Comcast. In August of 2005, the United States Court of Appeals for the Federal Circuit ("CAFC") overturned this finding of invalidity and remanded the case back to the District Court. Charter has filed a petition for rehearing and the CAFC has asked Broadcom to respond to the petition. Our case remains stayed pending resolution of the Charter case. We intend to continue to vigorously defend this case. In the event that a Court ultimately determines that we infringe on any of the patents, we may be subject to substantial damages, which may include treble damages and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. It is not possible to make an assessment of the probable outcome of the suit or to determine the extent of any potential liability or damages.

TiVo Inc.

During January 2004, TiVo Inc. ("TiVo") filed a lawsuit against us in the United States District Court for the Eastern District of Texas. The suit alleges infringement of United States Patent No. 6,233,389 (the '389 patent). The '389 patent relates to certain methods and devices for providing what the patent calls "time-warping." We have examined this patent and do not believe that it is infringed by any of our products or services. During March 2005, the Court denied our motion to transfer this case to the United States District Court for the Northern District of California. The trial is scheduled to commence on March 27, 2006 in Marshall, Texas. We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe this patent, we may be subject to substantial damages, which may include treble damages and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. It is not possible to make an assessment of the probable outcome of the suit or to determine the extent of any potential liability or damages.

Table of Contents**EHOSTAR DBS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued**

On April 29, 2005, we filed a lawsuit in the United States District Court for the Eastern District of Texas against TiVo and Humax USA, Inc. alleging infringement of U.S. Patent Nos. 5,774,186 (the '186 patent), 6,529,685 (the '685 patent), 6,208,804 (the '804 patent) and 6,173,112 (the '112 patent). These patents relate to digital video recorder ("DVR") technology. Trial is currently scheduled for February 2007.

Acacia

In June 2004, Acacia Media Technologies filed a lawsuit against us in the United States District Court for the Northern District of California. The suit also named DirecTV, Comcast, Charter, Cox and a number of smaller cable companies as defendants. Acacia is an intellectual property holding company which seeks to license the patent portfolio that it has acquired. The suit alleges infringement of United States Patent Nos. 5,132,992 (the '992 patent), 5,253,275 (the '275 patent), 5,550,863 (the '863 patent), 6,002,720 (the '720 patent) and 6,144,702 (the '702 patent). The '992, '863, '720 and '702 patents have been asserted against us.

The asserted patents relate to various systems and methods related to the transmission of digital data. The '992 and '702 patents have also been asserted against several internet adult content providers in the United States District Court for the Central District of California. On July 12, 2004, that Court issued a Markman ruling which found that the '992 and '702 patents were not as broad as Acacia had contended.

Acacia's various patent infringement cases have now been consolidated for pre-trial purposes in the United States District court for the Northern District of California. We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe on any of the patents, we may be subject to substantial damages, which may include treble damages and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. It is not possible to make an assessment of the probable outcome of the suit or to determine the extent of any potential liability or damages.

Forgent

In July of 2005, Forgent Networks, Inc. filed a lawsuit against us in the United States District Court for the Eastern District of Texas. The suit also named DirecTV, Charter, Comcast, Time Warner Cable, Cable One and Cox as defendants. The suit alleges infringement of United States Patent No. 6,285,746 (the '746 patent).

The '746 patent discloses a video teleconferencing system which utilizes digital telephone lines. We have examined this patent and do not believe that it is infringed by any of our products or services. Trial is currently scheduled for February 2007 in Marshall, Texas. We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe this patent, we may be subject to substantial damages, which may include treble damages and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. It is not possible to make an assessment of the probable outcome of the suit or to determine the extent of any potential liability or damages.

California Action

A purported class action relating to the use of terms such as "crystal clear digital video," "CD-quality audio," and "on-screen program guide," and with respect to the number of channels available in various programming packages was filed against us in the California State Superior Court for Los Angeles County in 1999 by David Pritikin and by Consumer Advocates, a nonprofit unincorporated association. The claim was denied class certification. In December, 2005, we reached a settlement for an immaterial amount with the individual plaintiffs.

Retailer Class Actions

During October 2000, two separate lawsuits were filed by retailers in the Arapahoe County District Court in the State of Colorado and the United States District Court for the District of Colorado, respectively, by Air Communication & Satellite, Inc. and John DeJong, et al. on behalf of themselves and a class of persons similarly situated. The plaintiffs are attempting to certify nationwide classes on behalf of certain of our satellite hardware retailers. The plaintiffs are requesting the Courts to declare certain provisions of, and changes to, alleged agreements between us and the retailers invalid and unenforceable, and to award damages for lost incentives and payments, charge backs, and other

Table of Contents**EHOSTAR DBS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued**

compensation. We are vigorously defending against the suits and have asserted a variety of counterclaims. The United States District Court for the District of Colorado stayed the Federal Court action to allow the parties to pursue a comprehensive adjudication of their dispute in the Arapahoe County State Court. John DeJong, d/b/a Nexwave, and Joseph Kelley, d/b/a Keltronics, subsequently intervened in the Arapahoe County Court action as plaintiffs and proposed class representatives. We have filed a motion for summary judgment on all counts and against all plaintiffs. The plaintiffs filed a motion for additional time to conduct discovery to enable them to respond to our motion. The Court granted a limited discovery period which ended November 15, 2004. The Court is hearing discovery related motions and has set a briefing schedule for the motion for summary judgment to begin 30 days after the ruling on those motions. A trial date has not been set. It is not possible to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damages.

Enron Commercial Paper Investment Complaint

During October 2001, EchoStar received approximately \$40.0 million from the sale of Enron commercial paper to a third party broker. That commercial paper was ultimately purchased by Enron. During November 2003, an action was commenced in the United States Bankruptcy Court for the Southern District of New York, against approximately 100 defendants, including us, who invested in Enron's commercial paper. The complaint alleges that Enron's October 2001 purchase of its commercial paper was a fraudulent conveyance and voidable preference under bankruptcy laws. We dispute these allegations. We typically invest in commercial paper and notes which are rated in one of the four highest rating categories by at least two nationally recognized statistical rating organizations. At the time of our investment in Enron commercial paper, it was considered to be high quality and considered to be a very low risk. The defendants moved the Court to dismiss the case on grounds that Enron's complaint does not adequately state a legal claim, which motion was denied but is subject to an appeal. It is too early to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damages.

Bank One

During March 2004, Bank One, N.A. ("Bank One") filed suit against us and one of our subsidiaries, EchoStar Acceptance Corporation ("EAC"), in the Court of Common Pleas of Franklin County, Ohio alleging breach of a duty to indemnify. Bank One alleges that EAC is contractually required to indemnify Bank One for a settlement it paid to consumers who entered private label credit card agreements with Bank One to purchase satellite equipment in the late 1990s. Bank One alleges that we entered into a guarantee wherein we agreed to pay any indemnity obligation incurred by Bank One. During April 2004, we removed the case to federal court in Columbus, Ohio. We deny the allegations and intend to vigorously defend against the claims. We filed a motion to dismiss the Complaint which was granted in part and denied in part. The Court granted our motion, agreeing we did not owe Bank One a duty to defend the underlying lawsuit. However, the Court denied the motion in that Bank One will be allowed to attempt to prove that we owed Bank One a duty to indemnify. The case is currently in discovery. A trial date has not been set. It is too early in the litigation to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damages.

Church Communications Network, Inc.

During August 2004, Church Communications Network, Inc. ("CCN") filed suit against us in the United States District Court for the Northern District of Alabama. The action was transferred to the United States District Court for the District of Colorado. CCN claimed approximately \$20.0 million in actual damages, plus punitive damages, attorney fees and costs for, among other things, alleged breaches of two contracts, and negligent, intentional and reckless misrepresentation. On March 17, 2006, the Court granted summary judgment in our favor limiting CCN to one contract claim, and limiting damages to no more than \$500,000. We can not predict whether CCN will appeal.

Table of Contents**EHOSTAR DBS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued***Vivendi*

In January 2005, Vivendi Universal, S.A. ("Vivendi"), filed suit against us in the United States District Court for the Southern District of New York alleging that we have anticipatorily repudiated or are in breach of an alleged agreement between us and Vivendi pursuant to which we are allegedly required to broadcast a music-video channel provided by Vivendi. Vivendi's complaint seeks injunctive and declaratory relief, and damages in an unspecified amount. On April 12, 2005, the Court granted Vivendi's motion for a preliminary injunction and directed us to broadcast the music-video channel during the pendency of the litigation. In connection with that order, we have also agreed to provide marketing support to Vivendi during the pendency of the litigation. In the event that the Court ultimately determines that we have a contractual obligation to broadcast the Vivendi music-video channel and that we are in breach of that obligation, we may be required to continue broadcasting the Vivendi music-video channel and may also be subject to substantial damages. We intend to vigorously defend this case.

Shareholder Derivative Lawsuit

During March 2005, a shareholder derivative lawsuit was filed against EchoStar, its chairman and chief executive officer Charles W. Ergen and the members of its board of directors in the District Court of Douglas County, Colorado. On November 7, 2005, Plaintiffs filed a Notice of Dismissal asking that the suit be dismissed without prejudice.

Other

In addition to the above actions, we are subject to various other legal proceedings and claims which arise in the ordinary course of business. In our opinion, the amount of ultimate liability with respect to any of these actions is unlikely to materially affect our financial position, results of operations or liquidity.

Reauthorization of Satellite Home Viewer Improvement Act

SHVERA requires, among other things, that all local broadcast channels delivered by satellite to any particular market be available from a single dish by June 8, 2006. We currently offer local broadcast channels in 164 markets across the United States. In 38 of those markets a second dish was previously required to receive some local channels in the market. While we have subsequently reduced the number of markets where a second dish is necessary, we can not entirely eliminate the second dish necessity in all markets absent full operability of EchoStar X.

In the event EchoStar X experiences any anomalies, satellite capacity limitations could force us to move the local channels in some two dish markets to different satellites, requiring subscribers in those markets to install a second or different dish to continue receiving their local broadcast channels. We could be forced, in that event, to stop offering local channels in some of those markets altogether. The transition of all local broadcast channels in a market to a single dish could result in disruptions of service for a substantial number of our customers. Further, our ability to timely comply with this requirement without incurring significant additional costs is dependent on, among other things, the continued operation of our EchoStar V satellite at the 129 degree orbital location until commencement of commercial operation of EchoStar X. EchoStar V or EchoStar X anomalies could force us to cease offering local channels by satellite in many markets absent regulatory relief from the single dish obligations. If impediments to our preferred transition plan arise, it is possible that the costs of compliance with the single dish requirement could exceed \$100.0 million.

Table of Contents

ECHOSTAR DBS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued

10. Financial Information for Subsidiary Guarantors

EchoStar DBS Corporation's senior notes are fully, unconditionally and jointly and severally guaranteed by all of our subsidiaries other than minor subsidiaries, as defined by Securities and Exchange regulations. The stand alone entity EchoStar DBS Corporation has no independent assets or operations. Therefore, supplemental financial information on a condensed consolidating basis of the guarantor subsidiaries is not required. There are no restrictions on our ability to obtain cash dividends or other distributions of funds from the guarantor subsidiaries, except those imposed by applicable law.

11. Segment Reporting*Financial Data by Business Unit*

Statement of Financial Accounting Standards No. 131, "Disclosures About Segments of an Enterprise and Related Information" ("SFAS 131") establishes standards for reporting information about operating segments in annual financial statements of public business enterprises and requires that those enterprises report selected information about operating segments in interim financial reports issued to stockholders. Operating segments are components of an enterprise about which separate financial information is available and regularly evaluated by the chief operating decision maker(s) of an enterprise. Under this definition we currently operate as two business units. The All Other category consists of revenue and expenses from other operating segments for which the disclosure requirements of SFAS 131 do not apply.

	DISH Network	EchoStar Technologies Corporation	All Other	Eliminations	ECC Consolidated Total	Other EchoStar Activities (1)	EDBS And Subsidiaries
Year Ended							
December 31, 2003							
Total revenue	\$5,518,183	\$131,684	\$ 97,983	\$ (8,554)	\$5,739,296	\$ (7,574)	\$5,731,722
Depreciation and amortization	347,331	6,717	44,158	—	398,206	(13,108)	385,098
Total costs and expenses	4,852,543	115,012	72,747	(8,554)	5,031,748	(21,798)	5,009,950
Interest income	64,750	—	308	—	65,058	(46,220)	18,838
Interest expense, net of amounts capitalized	(551,768)	(161)	(561)	—	(552,490)	145,460	(407,030)
Income tax benefit (provision), net	(12,604)	(1,085)	(687)	—	(14,376)	843	(13,533)
Net income (loss)	182,809	15,445	26,252	—	224,506	95,075	319,581
Year Ended							
December 31, 2004							
Total revenue	\$6,926,528	\$125,881	\$107,675	\$ (8,868)	\$7,151,216	\$ (8,188)	\$7,143,028
Depreciation and amortization	446,822	6,718	49,361	—	502,901	(12,203)	490,698
Total costs and expenses	6,222,175	154,147	80,457	(8,868)	6,447,911	(18,857)	6,429,054
Interest income	41,717	—	570	—	42,287	(11,678)	30,609
Interest expense, net of amounts capitalized	(504,612)	(133)	(987)	—	(505,732)	72,368	(433,364)
Income tax benefit (provision), net	(11,464)	(385)	240	—	(11,609)	544	(11,065)
Net income(loss)	215,582	(28,767)	27,954	—	214,769	84,644	299,413
Year Ended							
December 31, 2005							
Total revenue	\$8,150,841	\$174,194	\$113,977	\$(13,511)	\$8,425,501	\$ (4,005)	\$8,421,496
Depreciation and amortization	736,943	4,597	56,352	—	797,892	(5,512)	792,380
Total costs and expenses	7,016,590	190,478	64,696	(13,511)	7,258,253	(4,527)	7,253,726
Interest income	42,316	—	1,202	—	43,518	(8,877)	34,641
Interest expense, net of							

amounts capitalized	(372,752)	(105)	(987)	—	(373,844)	68,579	(305,265)
Income tax benefit (provision), net	514,048	(2,712)	(3,887)	—	507,449	(400,175)	107,274
Net income(loss)	1,488,180	(19,097)	45,457	—	1,514,540	(377,927)	1,136,613

- (1) "Other EchoStar Activities" represents the activity of affiliates consolidated in ECC's consolidated financial statements but not included in our consolidated financial statements.

F-40

Table of Contents

EHOSTAR DBS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued

Geographic Information and Transactions with Major Customers

	<u>United States</u>	<u>Europe</u> (In thousands)	<u>Total</u>
Long-lived assets, including FCC authorizations			
2004	<u>\$ 3,373,389</u>	<u>\$ 2,872</u>	<u>\$3,376,261</u>
2005	<u>\$ 4,135,383</u>	<u>\$ 2,860</u>	<u>\$4,138,243</u>
Revenue			
2003	<u>\$ 5,679,619</u>	<u>\$52,103</u>	<u>\$5,731,722</u>
2004	<u>\$ 7,096,480</u>	<u>\$46,548</u>	<u>\$7,143,028</u>
2005	<u>\$ 8,379,600</u>	<u>\$41,896</u>	<u>\$8,421,496</u>

Revenues are attributed to geographic regions based upon the location from where the sale originated. United States revenue includes transactions with both United States and international customers. Europe revenue includes transactions with customers in Europe, Africa and the Middle East. Revenues from these customers are included within the All Other operating segment.

During the years ended December 31, 2005, 2004 and 2003, United States revenue included export sales to one international customer which totaled \$178.4 million, \$125.3 million and \$127.6 million, respectively. These international sales accounted for approximately 2.1%, 1.8% and 2.2% of our total revenue during each of the years ended December 31, 2005, 2004 and 2003, respectively. Revenues from these customers are included within the EchoStar Technologies Corporation operating segment.

12. Valuation and Qualifying Accounts

Our valuation and qualifying accounts as of December 31, 2003, 2004 and 2005 are as follows:

	<u>Balance at Beginning of Year</u>	<u>Charged to Costs and Expenses</u>	<u>Deductions</u>	<u>Balance at End of Year</u>
		(In thousands)		
Year ended December 31, 2003:				
Assets:				
Allowance for doubtful accounts	\$ 9,276	\$61,303	\$(62,427)	\$ 8,152
Reserve for inventory	9,641	1,584	(4,461)	6,764
Year ended December 31, 2004:				
Assets:				
Allowance for doubtful accounts	\$ 8,152	\$65,710	\$(65,433)	\$ 8,429
Reserve for inventory	6,764	8,266	\$ (4,809)	10,221
Year ended December 31, 2005:				
Assets:				
Allowance for doubtful accounts	\$ 8,429	\$57,340	\$(56,970)	\$ 8,799
Reserve for inventory	10,221	3,917	(4,151)	9,987

Table of Contents

ECHOSTAR DBS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued

13. Quarterly Financial Data (Unaudited)

Our quarterly results of operations are summarized as follows:

	<u>March 31</u>	<u>June 30</u>	<u>September 30</u>	<u>December 31</u>
	(In thousands, except per share data) (Unaudited)			
Year ended December 31, 2004:				
Total revenue	\$1,577,533	\$1,776,042	\$1,860,355	\$1,929,098
Operating income	125,583	186,628	197,805	203,958
Net income (loss)	(24,983)	111,558	123,569	89,269
Year ended December 31, 2005:				
Total revenue	\$2,023,676	\$2,094,347	\$2,127,207	\$2,176,266
Operating income	291,712	333,959	291,584	250,515
Net income (loss)	325,669	427,245	229,918	153,781

14. Related Party Transactions

During December 2005, we paid a dividend of approximately \$200.0 million to EOC. In addition, during 2005, we advanced EchoStar approximately \$139.6 million for general corporate purposes.

During 2003, we recorded a \$289.0 million payable to our affiliate, EOC II, related to our purchase of the EchoStar IX satellite. We repaid this amount during 2004.

EchoStar owns 50% of NagraStar L.L.C. ("NagraStar"), a joint venture that is our exclusive provider of security access devices. Nagra USA, a subsidiary of the Kudelski Group, owns the other 50% of NagraStar. NagraStar purchases these security access devices from NagraCard SA, a Swiss company which is also a subsidiary of the Kudelski Group. Because EchoStar is not required to consolidate NagraStar, but it does have the ability to significantly influence its operating policies, EchoStar accounted for its investment in NagraStar under the equity method of accounting for all periods presented. During the years ended December 31, 2005, 2004 and 2003, we purchased from NagraStar approximately \$121.4 million, \$123.8 million and \$68.4 million, respectively, for security access devices. As of December 31, 2005 and 2004, amounts payable to NagraStar totaled \$3.9 million and \$22.7 million, respectively. As of December 31, 2005, we were committed to purchase approximately \$35.5 million of security access devices from NagraStar.

We purchase certain programming content from Satellite Communications Operating Corporation ("SCOC"), a wholly-owned subsidiary of ECC, and our affiliate. During the years ended December 31, 2005, 2004 and 2003, we paid SCOC approximately \$11.6 million, \$13.2 million, and \$15.6 million, respectively, for programming services. As of December 31, 2005 and 2004, there were no amounts payable to SCOC.

We lease transponders and provide certain other services to Transponder Encryption Services Corporation ("TESC"), a wholly-owned subsidiary of ECC, and our affiliate. During the years ended December 31, 2005, 2004 and 2003, we recognized approximately \$124.6 million, \$114.9 million and \$89.8 million, respectively, of revenues from TESC for leasing and other services. As of December 31, 2005 and 2004, amounts payable to TESC were \$51.0 million and \$40.5 million, respectively.

Table of Contents**EHOSTAR DBS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — Continued****15. Subsequent Events****\$1.5 Billion Senior Notes Offering**

On February 2, 2006, we sold \$1.5 billion aggregate principal amount of our ten-year, 7 1/8% Senior Notes due February 1, 2016 in a private placement in accordance with Securities and Exchange Commission Rule 144A and Regulation S under the Securities Act of 1933. Interest on the notes will be paid February 1 and August 1 of each year, commencing August 1, 2006. The proceeds from the sale of the notes were used to redeem our outstanding 9 1/8% Senior Notes due 2009 and are also intended to be used for other general corporate purposes.

9 1/8% Senior Notes Redemption

Effective February 17, 2006, we redeemed the balance of our outstanding 9 1/8% Senior Notes due 2009. In accordance with the terms of the indenture governing the notes, the remaining principal amount of the notes of approximately \$442.0 million was redeemed at 104.563% of the principal amount, for a total of approximately \$462.1 million. The premium paid of approximately \$20.1 million, along with unamortized debt issuance costs of approximately \$2.8 million, were recorded as charges to earnings in February 2006.

F-43

Table of Contents**Exhibit Index**

Exhibit No. Description

- 3.1(a)* Articles of Incorporation of EDBS (incorporated by reference to Exhibit 3.4(a) to the Company's Registration Statement on Form S-4, Registration No. 333-31929).
- 3.1(b)* Certificate of Amendment of the Articles of Incorporation of EchoStar DBS Corporation, dated as of August 25, 2003 (incorporated by reference to Exhibit 3.1(b) to the Annual Report on Form 10-K of EDBS for the year ended December 31, 2003, Commission File No.333-31929).
- 3.1(c)* Bylaws of EDBS (incorporated by reference to Exhibit 3.4(b) to the Company's Registration Statement on Form S-4, Registration No. 333-31929).
- 4.1* Indenture, relating to the 9 1/8% Senior Notes Due 2009, dated as of December 28, 2001 between EDBS and U.S. Bank Trust National Association, as Trustee (incorporated by reference to Exhibit 4.17 to the Annual Report on Form 10-K of EchoStar for the year ended December 31, 2001, Commission File No. 0-26176).
- 4.2* Registration Rights Agreement, relating to the 9 1/8% Senior Notes Due 2009, dated as of December 28, 2001, by and among EDBS and Deutsche Banc Alex. Brown, Inc., Credit Suisse First Boston Corporation, Lehman Brothers Inc. and UBS Warburg L.L.C. (incorporated by reference to Exhibit 4.18 to the Annual Report on Form 10-K of EchoStar for the year ended December 31, 2001, Commission File No. 0-26176).
- 4.3* Indenture, relating to EDBS 5 3/4% Senior Notes due 2008, dated as of October 2, 2003, between EDBS and U.S. Bank Trust National Association, as Trustee (incorporated by reference to Exhibit 4.1 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended September 30, 2003, Commission File No.0-26176).
- 4.4* Indenture, relating to EDBS 6 3/8% Senior Notes due 2011, dated as of October 2, 2003, between EDBS and U.S. Bank Trust National Association, as Trustee (incorporated by reference to Exhibit 4.2 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended September 30, 2003, Commission File No.0-26176).
-

Table of Contents

Exhibit No. Description

- 4.5* Indenture, relating to EDBS Floating Senior Notes due 2008, dated as of October 2, 2003, between EDBS and U.S. Bank Trust National Association, as Trustee (incorporated by reference to Exhibit 4.3 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended September 30, 2003, Commission File No.0-26176).
- 4.6* Registration Rights Agreement dated as of October 2, 2003 among EDBS and the other parties named herein (incorporated by reference to Exhibit 4.4 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended September 30, 2003, Commission File No.0-26176).
- 4.7* First Supplemental Indenture, relating to the 9 1/8% Senior Notes Due 2009, dated as of December 31, 2003 between EDBS and U.S. Bank Trust National Association, as Trustee (incorporated by reference to Exhibit 4.12 to the Annual Report on Form 10-K of EchoStar for the year ended December 31, 2003, Commission File No.0-26176).
- 4.8* First Supplemental Indenture, relating to the 5 3/4% Senior Notes Due 2008, dated as of December 31, 2003 between EDBS and U.S. Bank Trust National Association, as Trustee (incorporated by reference to Exhibit 4.13 to the Annual Report on Form 10-K of EchoStar for the year ended December 31, 2003, Commission File No.0-26176).
- 4.9* First Supplemental Indenture, relating to the 6 3/8% Senior Notes Due 2011, dated as of December 31, 2003 between EDBS and U.S. Bank Trust National Association, as Trustee (incorporated by reference to Exhibit 4.14 to the Annual Report on Form 10-K of EchoStar for the year ended December 31, 2003, Commission File No.0-26176).
- 4.10* First Supplemental Indenture, relating to the Floating Rate Senior Notes Due 2008, dated as of December 31, 2003 between EDBS and U.S. Bank Trust National Association, as Trustee (incorporated by reference to Exhibit 4.15 to the Annual Report on Form 10-K of EchoStar for the year ended December 31, 2003, Commission File No.0-26176).
- 10.1* Form of Satellite Launch Insurance Declarations (incorporated by reference to Exhibit 10.10 to the Registration Statement on Form S-1 of Dish Ltd., Registration No. 33-81234).
- 10.2* Manufacturing Agreement, dated as of March 22, 1995, between HTS and SCI Technology, Inc. (incorporated by reference to Exhibit 10.12 to the Registration Statement on Form S-1 of Dish Ltd., Commission File No. 33-81234). **
- 10.3* EchoStar 1995 Stock Incentive Plan (incorporated by reference to Exhibit 10.16 to the Registration Statement on Form S-1 of EchoStar, Registration No. 33-91276).**
- 10.4* Amended and Restated EchoStar 1999 Stock Incentive Plan (incorporated by reference to Appendix A to EchoStar's Definitive Proxy Statement on Schedule 14A dated August 24, 2005).**
- 10.5* 2002 Class B CEO Stock Option Plan (incorporated by reference to Appendix A to EchoStar's Definitive Proxy Statement on Schedule 14A dated April 9, 2002).**
- 10.6* Agreement between HTS, ESC and ExpressVu Inc., dated January 8, 1997, as amended (incorporated by reference to Exhibit 10.18 to the Annual Report on Form 10-K of EchoStar for the year ended December 31, 1996, as amended, Commission File No. 0-26176).
- 10.7* Agreement to Form NagraStar L.L.C., dated as of June 23, 1998, by and between Kudelski S.A., EchoStar and ESC (incorporated by reference to Exhibit 10.28 to the Annual Report on Form 10-K of EchoStar for the year ended December 31, 1998, Commission File No. 0-26176).

Table of Contents

Exhibit No. Description

- 10.8* License and OEM Manufacturing Agreement, dated July 1, 2002, between EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia, Inc. (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended September 30, 2002, Commission File No. 0-26176).
- 10.9* Amendment No. 19 to License and OEM Manufacturing Agreement, dated July 1, 2002, between EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia, Inc. (incorporated by reference to Exhibit 10.57 to the Annual Report on Form 10-K of EchoStar for the year ended December 31, 2002, Commission File No.0-26176).
- 10.10* Satellite Service Agreement, dated as of March 21, 2003, between SES Americom, Inc., EchoStar Satellite Corporation and EchoStar Communications Corporation (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended March 31, 2003, Commission File No.0-26176).
- 10.11* Amendment No. 1 to Satellite Service Agreement dated March 31, 2003 between SES Americom Inc. and EchoStar (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended September 30, 2003, Commission File No.0-26176).
- 10.12* Satellite Service Agreement dated as of August 13, 2003 between SES Americom Inc. and EchoStar (incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended September 30, 2003, Commission File No.0-26176).
- 10.13* Satellite Service Agreement, dated February 19, 2004, between SES Americom, Inc. and EchoStar (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended March 31, 2004, Commission File No.0-26176).
- 10.14* Amendment No. 1 to Satellite Service Agreement, dated March 10, 2004, between SES Americom, Inc. and EchoStar (incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended March 31, 2004, Commission File No.0-26176).
- 10.15* Amendment No. 3 to Satellite Service Agreement, dated February 19, 2004, between SES Americom, Inc. and EchoStar (incorporated by reference to Exhibit 10.3 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended March 31, 2004, Commission File No.0-26176).
- 10.16* Whole RF Channel Service Agreement, dated February 4, 2004, between Telesat Canada and EchoStar (incorporated by reference to Exhibit 10.4 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended March 31, 2004, Commission File No.0-26176).
- 10.17* Letter Amendment to Whole RF Channel Service Agreement, dated March 25, 2004, between Telesat Canada and EchoStar (incorporated by reference to Exhibit 10.5 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended March 31, 2004, Commission File No.0-26176).
- 10.18* Amendment No. 2 to Satellite Service Agreement, dated April 30, 2004, between SES Americom, Inc. and EchoStar (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended June 30, 2004, Commission File No.0-26176).
- 10.19* Second Amendment to Whole RF Channel Service Agreement, dated May 5, 2004, between Telesat Canada and EchoStar (incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended June 30, 2004, Commission File No.0-26176).
- 10.20* Third Amendment to Whole RF Channel Service Agreement, dated October 12, 2004, between Telesat Canada and EchoStar (incorporated by reference to Exhibit 10.22 to the Annual Report on Form 10-K of EchoStar for the year ended December 31, 2004, Commission File No.0-26176).

Table of Contents

Exhibit No. Description

- 10.21* Amendment No. 4 to Satellite Service Agreement, dated October 21, 2004, between SES Americom, Inc. and EchoStar (incorporated by reference to Exhibit 10.23 to the Annual Report on Form 10-K of EchoStar for the year ended December 31, 2004, Commission File No.0-26176).
- 10.22* Amendment No. 3 to Satellite Service Agreement, dated November 19, 2004 between SES Americom, Inc. and EchoStar (incorporated by reference to Exhibit 10.24 to the Annual Report on Form 10-K of EchoStar for the year ended December 31, 2004, Commission File No.0-26176).
- 10.23* Amendment No. 5 to Satellite Service Agreement, dated November 19, 2004, between SES Americom, Inc. and EchoStar (incorporated by reference to Exhibit 10.25 to the Annual Report on Form 10-K of EchoStar for the year ended December 31, 2004, Commission File No.0-26176).
- 10.24* Amendment No. 6 to Satellite Service Agreement, dated December 20, 2004, between SES Americom, Inc. and EchoStar (incorporated by reference to Exhibit 10.26 to the Annual Report on Form 10-K of EchoStar for the year ended December 31, 2004, Commission File No.0-26176).
- 10.25* Description of the 2005 Long-Term Incentive Plan dated January 26, 2005 (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended March 31, 2005, Commission File No. 0-26176).**
- 10.26* Description of the 2005 Cash Incentive Plan dated January 22, 2005 (incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended March 31, 2005, Commission File No. 0-26176).**
- 10.27* Settlement Agreement and Release effective February 25, 2005 between EchoStar Satellite L.L.C., EchoStar DBS Corporation and the insurance carriers for the EchoStar IV satellite (incorporated by reference to Exhibit 10.3 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended March 31, 2005, Commission File No. 0-26176).
- 10.28* Amendment No. 4 to Satellite Service Agreement, dated April 6, 2005, between SES Americom, Inc. and EchoStar (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended June 30, 2005, Commission File No. 0-26176).
- 10.29* Amendment No. 5 to Satellite Service Agreement, dated June 20, 2005, between SES Americom, Inc. and EchoStar (incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended June 30, 2005, Commission File No. 0-26176).
- 10.30* Incentive Stock Option Agreement (Form A) (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K of EchoStar filed July 7, 2005, Commission File No.0-26176).**
- 10.31* Incentive Stock Option Agreement (Form B) (incorporated by reference to Exhibit 99.2 to the Current Report on Form 8-K of EchoStar filed July 7, 2005, Commission File No.0-26176).**
- 10.32* Restricted Stock Unit Agreement (Form A) (incorporated by reference to Exhibit 99.3 to the Current Report on Form 8-K of EchoStar filed July 7, 2005, Commission File No.0-26176).**
- 10.33* Restricted Stock Unit Agreement (Form B) (incorporated by reference to Exhibit 99.4 to the Current Report on Form 8-K of EchoStar filed July 7, 2005, Commission File No.0-26176).**
- 10.34* Incentive Stock Option Agreement (1999 Long-Term Incentive Plan) (incorporated by reference to Exhibit 99.5 to the Current Report on Form 8-K of EchoStar filed July 7, 2005, Commission File No.0-26176).**

Table of Contents

Exhibit No. Description

- 10.35* Nonqualifying Stock Option Agreement (2005 Long-Term Incentive Plan (incorporated by reference to Exhibit 99.7 to the Current Report on Form 8-K of EchoStar filed July 7, 2005, Commission File No.0-26176).**
- 10.36* Restricted Stock Unit Agreement (2005 Long-Term Incentive Plan) (incorporated by reference to Exhibit 99.8 to the Current Report on Form 8-K of EchoStar filed July 7, 2005, Commission File No.0-26176).**
- 31.1 H Section 302 Certification by Chairman and Chief Executive Officer.
- 31.2 H Section 302 Certification by Executive Vice President and Chief Financial Officer.
- 32.1 H Section 906 Certification by Chairman and Chief Executive Officer.
- 32.2 H Section 906 Certification by Executive Vice President and Chief Financial Officer.

H Filed herewith.

* Incorporated by reference.

** Constitutes a management contract or compensatory plan or arrangement.

EXHIBIT 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
Section 302 Certification

I, Charles W. Ergen, certify that:

1. I have reviewed this annual report on Form 10-K of EchoStar DBS Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 17, 2006

/s/ Charles W. Ergen
Chairman and Chief Executive Officer

EXHIBIT 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER
Section 302 Certification

I, David J. Rayner, certify that:

1. I have reviewed this annual report on Form 10-K of EchoStar DBS Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 17, 2006

/s/ David J. Rayner
Executive Vice President and Chief
Financial Officer

EXHIBIT 32.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
Section 906 Certification

Pursuant to 18 U.S.C. § 1350, the undersigned officer of EchoStar DBS Corporation (the "Company"), hereby certifies that to the best of his knowledge the Company's Annual Report on Form 10-K for the year ended December 31, 2005 (the "Report") fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 17, 2006Name: /s/ Charles W. ErgenTitle: Chairman of the Board of Directors and Chief
Executive Officer

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

EXHIBIT 32.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER
Section 906 Certification

Pursuant to 18 U.S.C. § 1350, the undersigned officer of EchoStar DBS Corporation (the "Company"), hereby certifies that to the best of his knowledge the Company's Annual Report on Form 10-K for the year ended December 31, 2005 (the "Report") fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 17, 2006Name: /s/ David J. RaynerTitle: Executive Vice President and Chief Financial Officer

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

Rex Povenmire

4240 Walker Rd.
Colorado Springs, CO 80908

Cell: (719) 337-6473

Professional Summary:

35 years experience in Technical, Operational, and Program Management, almost exclusively in the Telecommunications and Satellite DBS industries. This experience has provided me with an understanding of not only the technical systems involved in the DBS industry, but also the operational and management systems that are supported by this underlying technology.

Relevant Experience

Extensive Operational and Technical Knowledge of Direct Broadcast Satellite (DBS) systems (particularly as associated with Dish Network):

- Local Receive Facilities (LRF)
- Fiber Backhaul Network and RF receive systems
- Baseband Router Systems
- Digital Compression and Statistical Multiplexing systems
- Uplink RF transmit systems
- Site Diversity requirements
- Satellite architecture and primary systems
- Satellite fleet planning, management, and operations
- Customer Service Management Systems
- Conditional Access Systems (CAS)
- Electronic Program Guide and Network Information
- Consumer Premises Equipment (CPE)
- All other operational aspects of a DBS systems

Employment History:

6/2013- Present

Technical Consultant to Dish Network

Consultant to CEO, COO, and Legal Organization on Dish System Architecture, Satellite Fleet, Signal Integrity (anti-piracy), and Dish Operational Systems.

1993-2003, 2006-2007, 2008-2013

EchoStar and Dish Network

Denver Colorado

➤ Vice President of Corporate Initiatives

(Dish)

- Responsible for the Corporate Initiatives Program Management Department



- Primary Technical POC for Dish System Architecture, Satellite Fleet, and Signal Integrity (anti-piracy) issues
 - Responsible for Intercompany relations and technical interface with EchoStar.
 - Various Special Projects requested by Executive Management.
- VP/SVP of Strategic Initiatives (EchoStar)
Managed all strategic projects, both technical and operational, associated with the rapid growth of the Dish Network
 - COO of NagraStar (An EchoStar/Nagra JV)
Lead responsibility for a Software Development Company developing secure Conditional Access Systems for Dish Network and other international companies.
 - Director of International Systems Engineering (EchoStar)
Business Development and Program Manager for the integration of MPEG Digital Compression Systems, Conditional Access, and the development of EchoStar receivers for ExpressVu in Toronto, Canada, and ViaDigital in Madrid Spain.
 - Program Manager for the launch of Dish Network (EchoStar)
Front Line PM to the executive team to implement all systems required for the launch of the original Dish Network.

1978-1984, 1985-1993

TRW

San Luis Obispo, CA and Colorado Springs, CO 80907

Increasing levels of responsibilities over my 15 year career with multiple TRW divisions:

- Manager of Secure Communications Programs for Classified NSA *ComSec* programs
Direct responsibility for all aspects of program performance: proposals and negotiations; detailed program planning; specification and development engineering; program cost/schedule control; and primary customer focal point.
- Engineering and Manufacturing Operations Manager
This 130 employee organization included all material functions; manufacturing assembly and test; and the mechanical, manufacturing and field service engineering organizations.
- Manager of Proposal Operations
Division wide responsibility for long term strategic planning, as well as proposal planning, preparation, and management.
- Proposal / Project / Program Manager

Managed numerous commercial and government programs from design through production deliveries

- Developed and produced over 50,000 tactical, handheld encryption devices (KL-43 product line)
- Managed production program for a 24 channel 1.54 MHz T-1 time division multiplex system for voice and data transmission (CY-104)
- Produced 27 complex test stations for testing power, air, and liquid cooling systems for Martin-Marietta (LANTIRN Environmental Control Unit Test Stations)
- Managed the consolidation of production, system integration, and acceptance test activities from several scattered divisions, to produce a 384 channel, 4/8 GHz Microwave Communications System (DRAMA FCC-98/99 and FRC-17X)

➤ Engineering Lab Supervisor, Sr. Production Technician

As lab supervisor, responsible for fabricating design prototypes and developing production test equipment.

Comtel (A Division of SPAR Aerospace)

Santa Maria, CA 93455

1984-1985 Program Manager

Managed the development and production of a ground based, satellite Time Division Multiple Acquisition (TDMA) system operating at 15 MHz and 60 MHz. This software intensive system operated on sophisticated custom hardware. Customers included Dow Jones, Western Union, US DOE, as well as other US agencies and foreign governments.

Education:

California Polytechnic State University, San Luis Obispo, CA

1984-1987 Graduate coursework in Managerial Accounting, Business Analysis, and Business Organizations

1982 BSET Electronics Engineering, graduated with honors

Ongoing coursework and seminars on program, proposal, and operational management.

Security Clearance: (Expired)

Top Secret with Crypto Clearance and Special Background Investigation (SBI)

AREAS OF EXPERTISE

- SALT Litigation Analysis ♦ Tax Planning
- ♦ Tax Policy Development ♦ Economic Development Tax Incentives
- ♦ Appellate Practice
- ♦ Audit Consultation ♦ Negotiations

CAREER HISTORY

Parker Poe Adams & Bernstein LLP ♦ Columbia, South Carolina 2011 through present
Partner, head of the firm's State and Local Tax (SALT) practice.

- ♦ **SALT Leader:** Services provided include state and local tax planner, expert witness, controversy advisor for SALT audits and property tax disputes, litigation counsel at both trial and appellate levels, due diligence analysis for mergers and acquisitions, and economic development incentives.
- ♦ **Sample of Matters Handled:**
 - Represented a nationwide retailer involving sales and use tax nexus of a remote retailer having no physical presence in the taxing states but being an affiliate of a business with physical presence in the taxing states.
 - Represented a multistate seller of a product exempt from sales tax but asserted to be used for a non-exempt purpose.
 - Represented the State of South Carolina against a claim asserting all caps on sales and use tax and all SC sales and use tax exemptions are unconstitutional violations of equal protection and special legislation.
 - Represented a Fortune 500 financial industries company involving nexus for corporate income tax of REITs and REIT shareholders as well as issues of taxation of dividend income paid to REIT shareholders.
 - Represented a Fortune 500 financial industries company involving corporate income tax of exempt federal interest under 31 USC 3142.
 - Represented a Fortune 500 automotive supplier involving corporate income tax on the sale of intangible assets allocated as non-business income.
 - Represented a Fortune 500 company in the healthcare industry in a corporate income tax matter seeking a forced combination of affiliated corporations.
 - Represented a Fortune 100 company in the financial services industry involving nexus for banking tax and corporate income tax over banks and credit card companies and involving apportioning income using a "market based" apportionment (based on the location of the customer) rather than a cost of performance basis.



South Carolina Department of Revenue ♦ Columbia, South Carolina 2006 through 2010
Administrator and enforcer of revenue laws, collecting more than \$6B annually.

- ♦ **Director:** Provided tax oversight for state, setting and enforcing policy to collect revenues. Promoted economic development by establishing and implementing tax incentives for prospective businesses.
 - Formed and implemented strategies to collect previously uncollected tax amounts. Served as a member of Tax Realignment Commission (TRAC) tasked with redesigning South Carolina's tax code and devising an implementation strategy.
 - Supervised Deputy Director and Senior Administrator for Internal Audit while retaining indirect management responsibility for 622 total employees.
 - Interacted daily with multiple senior department heads, ensuring compliance and accuracy of assessments. Controlled annual operating budget of \$52M.
- ♦ **Economic Development:** Assisted SC Department of Commerce in economic development efforts.
 - Served as Chairman of Coordinating Council of the SC Department of Commerce in overseeing awarding of economic incentives for SC economic development.
 - Recruiting trips to various US States as well as recruiting trip to China.
 - Recruited businesses to South Carolina enabling \$1B+ investments by crafting effective economic incentives as well as providing senior-level corporate officials with understanding of state tax law.

South Carolina Administrative Law Court ♦ Columbia, South Carolina 1995 to 2006
SC Court responsible for trials arising under the Administrative Procedures Act.

- ♦ **Judge:**
 - Held trials and rendered written decisions as 1 of 6 state-wide judges ruling on cases pertaining to a variety of diverse matters.
 - Cases heard and ruled on included environmental law disputes, maritime permitting disputes, solid waste disposal permitting and fines, and water quality disputes.
 - Had a specific emphasis in hearing and deciding tax controversies involving corporate income tax, sales and use tax, property tax, and personal income tax.
 - Wrote numerous orders and decision as well as presenting CLE matters, and lectures for South Carolina Bar members as well as other organizations.

South Carolina Attorney General ♦ Columbia, South Carolina 1980 to 1995
 The Attorney General is SC's Chief legal officer.

- ♦ **Director of Tax Division:** Led all tax litigation activities of the SC Attorney General from 1991 to 1995.
 - As Assistant, Senior Assistant, and Chief Deputy, drafted 30+ Attorney General's Opinions interpreting state and local tax statutes.
- ♦ **Innovative:**
 - Devised theory now known in tax parlance as "Geoffrey issue" and litigated landmark case of *Geoffrey, Inc. v. South Carolina Dept. of Revenue and Taxation*, 313 S.C. 15, 437 S.E.2d 13 (1993).
- ♦ **Experienced Litigator:**
 - Successfully briefed and orally argued before the US Supreme Court *Spencer v. South Carolina Tax Commission*, 281 S.C. 492, 316 S.E.2d 386 (1984); judgment affirmed by 471 U.S. 82, 105 S.Ct. 1859 (1985)
 - Litigated 50+ tax disputes in state and federal trial courts and briefed and argued 25+ disputes in state and federal appellate courts (including the US Supreme Court).

MEMBERSHIPS, PUBLICATIONS, AND PRESENTATIONS

- ♦ **Memberships**
 - Southeastern Association of Tax Administrators, Industry Council current member and past Industry Council Chairperson
 - Chairperson, Tax Committee, SC Chamber of Commerce
 - Federation of Tax Administrators, Former Executive Board Member
- ♦ **Publications**
 - "Geoffrey v. South Carolina Tax Commission: Is the Camel's Nose Under the Tent?" Tax Management, Multistate Tax Report
 - "Delaware Subsidiaries Can Still Reduce Tax But More Planning Needed," The Journal of Multistate Taxation
 - "The Use of Title 42 USC §1983 in State Tax Litigation," Revenue Administration
 - "Strategies for Corporate Tax Planning: Trends and Changes in SALT Planning Strategies," West Publishing, Aspatore Books, Inside the Minds

- ◆ Presentations at Seminars & Speaking Engagements
 - Anatomy of a State Tax Dispute: Best Practices in Contested Litigation, Council On State Taxation (COST) 43rd Annual Meeting, Orlando, FL
 - Federalism in the State Tax System, Association of Corporate Counsel, Charleston, SC
 - Apportionment: Render to the States Only What is Theirs, Georgetown Law 35th Annual Advanced State and Local Tax Institute, Washington, D.C.
 - Hot Topics in State Taxation, Tax Executives Institute, Charlotte, NC
 - Visiting Professor, Fundamentals of Federal Taxation of Partnerships, Corporations and Estates, Midlands Technical College, Columbia, SC
 - Guest Lecturer, Duties and Functions of County Officials in South Carolina Property Taxation and Application of the Revenue Procedures Act Before the South Carolina Department of Revenue, University of South Carolina School of Law, State and Local Tax
 - South Carolina Income Tax and Economic Tax Incentives, Recent Tax Developments in South Carolina, North Carolina/South Carolina Tax Bar, Kiawah Island, SC
 - Developments in South Carolina Sales Tax and State Tax Issues in South Carolina, Council on State Taxation, Charlotte, NC
 - Best Practices in State Tax Litigation, Council on State Taxation, Phoenix, AZ
 - Bridge the Gap on Administrative Law, South Carolina Bar
 - Litigating Before the ALJD, South Carolina Bar Annual Convention, Governmental Section
 - That Was the Year That Was – Review of Changes in Administrative Law, South Carolina Bar
 - Remedies and Procedures for Suits Against State Officials, Greenville County Tax Bar
 - Administrative Procedures Before the South Carolina Department of Revenue, Greenville County Tax Bar
 - Tax Practice Under the Revenue Procedures Act, Columbia Tax Study Group
 - 42 USC § 1983 in State Court Tax Disputes, Federation of Tax Administrators
 - Collecting Taxes Under an Automatic Stay Due to Bankruptcy, Southeastern Association of Tax Attorneys
 - Nexus and Jurisdiction for Taxation of Delaware Holding Companies, Southeastern Association of Tax Attorneys

- o Moot Court Presentation on Taxation of Intangibles and Geoffrey v. South Carolina: Is the Camel's Nose Under the Tent?, Vanderbilt University's Paul J. Hartman Tax Forum
- o Intangibles and the Creation of Nexus for Income Tax Purposes, Ohio Tax Conference
- o Taxes and the Bottom Line: New Tax Appeal Process, South Carolina Chamber of Commerce

EDUCATION

Master of Law and Taxation

Law School of the College of William and Mary ♦ Williamsburg, Virginia

Juris Doctor

Master of Business Administration

Bachelor of Science in Accounting

University of South Carolina ♦ Columbia, South Carolina

PROFESSIONAL AFFILIATIONS

Admitted to practice before:

South Carolina Supreme Court ♦ South Carolina Court of Appeals ♦ South Carolina Federal District Court
Fourth Circuit Court of Appeals ♦ United States Supreme Court

MATTHEW P. SHEERS
22960 HOPE DALE AVENUE
PARKER, CO 80138
(303) 736-2900 (home) (720) 235-7697 (cell)
Matthew.Sheers@Dish.com

PROFESSIONAL EXPERIENCE

DISH NETWORK CORPORATION Englewood, CO 2009 – Present
Vice-President – Corporate Taxes

Taxpayer had progressed from not paying any income taxes in 2007 due to NOL carryforwards into being perhaps the largest taxpayer headquartered in the state of Colorado in 2009. Candidate succeeded in upgrading existing mom-and-pop type tax department into a Fortune 200 caliber department of 40+ individuals internally and a \$16M annual budget for external, out-sourced support.

Objectives achieved during this period include:

- Provided complete tax department services to sister NASDAQ company for two years until separate tax department could be set up.
- Sought and received US and UK income tax rulings resulting in \$350M in tax savings related to various M&A transactions.

(DISH Network Corp. (NASDAQ: DISH) provides approximately 14 million pay-TV subscribers with the highest-quality programming, the most choices, best value and with award-winning HD and DVR technology.)

TERADATA CORPORATION Miamisburg, OH 2007 –2009
Vice-President – Corporate Taxes

Held overall accountability for a department of 14 tax professionals covering operations in 40+ countries. Tax Group was responsible for all tax aspects of Teradata's operations including oversight of out-sourced tax compliance activities.

Objectives achieved during this period include:

- Relocation and re-staffing of Tax Function from original location (Dayton) to Atlanta.
- Headed multi-function team (Accounting, HR, Law, Project Management, Tax, Treasury, etc.) responsible for international split up transactions in 40 countries to separate Teradata operations from those of NCR.

(Teradata Corporation (NYSE: TDC) is the world's largest company solely focused on raising intelligence through data warehousing and enterprise analytics. Until 2007, Teradata was the largest, most profitable business unit within NCR. Upon spin-off Teradata replaced NCR in the S&P 500.)



PROFESSIONAL EXPERIENCE *(continued)***NCR CORPORATION** Dayton, OH

1994 – 2007

Vice-President – Corporate Taxes

(promoted 1999)

Directed department of 80+ tax professionals in 20+ countries responsible for world-wide taxation of NCR's operations including the tax related aspects of planning, accounting, compliance, controversy resolution, incentive negotiation, and legislative initiatives. Objectives achieved during this period include:

- Formalization and documentation of controls for tax accounting, Reengineering of Tax Accounting process, and adoption of FIN 48 consistent with Sarbanes-Oxley resulting in no material weaknesses.
- Formation of group to cost effectively deal with local country tax accounting and compliance requirements as NCR migrated to a financial shared services environment. Formation and transition of responsibilities was completed early and under budget. Local statutory accounting responsibilities were subsequently added to this group's charter.
- Development of 10 person back office support center in Malaysia to deliver high quality US and foreign tax compliance and foreign statutory accounting assistance efficiently but with the location related savings.

Director – Economic Analysis

(promoted 1996)

Duties included responsibility for all non-legal aspects of tax planning and for transfer pricing for NCR and subsidiaries.

Manager – International Taxes

Held primary responsibility for international tax compliance for wholly owned AT&T subsidiary with over 120 foreign subsidiaries and branches. Oversaw five other tax professionals.

(From 1991 until 1996, NCR Corporation was a division of AT&T Corporation, named AT&T Global Information Solutions.)

ERNST & YOUNG Miami, FL

1993 – 1994

Tax Manager – International Taxes

DELOITTE & TOUCHE Pittsburgh, PA

1987 – 1993

Tax Manager – International Taxes

EDUCATION

Master of Science - Taxation (M.S.-Tax) degree
Robert Morris College, Pittsburgh, PA (1988-1990)
G.P.A. of 3.93

CPA Exam
State of WV (Nov. 1987)

Master of Professional Accounting (M.P.A.) degree
West Virginia University, Morgantown, WV (1986-1987)
G.P.A. of 4.00

Bachelor of Science in Business Administration with a major in Accounting
West Virginia University, Morgantown, WV (1983-1985)
G.P.A. of 3.42



Your DISH Network Statement

December 1, 2010

Page 1 of 2

DEPT 0083 PALATINE IL 60055-0083
0255 9000 NO RP 01 12022010 NNNNNN 01 861250

[REDACTED]
[REDACTED]
RIDGE SPRING SC [REDACTED]

Account Holder: [REDACTED]
Account Number: [REDACTED]
Service Address: [REDACTED]
RIDGE SPRING SC [REDACTED]

Service Period 12/15/10 - 01/14/11

Account Summary

Previous Statement Balance	\$ 107.33
Payment - Thank you	-107.33
Statement Balance	107.33



Your Bank Account Will Be Charged On 12/21/10

See details on the back

Contact Us

- Online: dishnetwork.com
- Email: care@dishnetwork.com
- Phone: 1-800-894-9131

▼ If choosing one of the options below, detach here and send the bottom return portion. ▼



Payment Options

To change your AutoPay options

- Online - Go to www.dishnetwork.com/myaccount

Account Holder: [REDACTED]
Account Number: [REDACTED]
Billing Address: [REDACTED]
RIDGE SPRING SC [REDACTED]

Your Bank Account Will Be Charged On 12/21/10

DISH NETWORK
PO BOX 105169
ATLANTA GA 30348-5169

825590941439995300107334

DSH0015

3036





8255 9000 NO RP 01 12022010 NNNNNN 01 951250

Account Holder: [REDACTED]
Account Number: [REDACTED]
Statement Date: December 01, 2010

Table with columns: Service Date(s), Detailed Activity, Amount. Rows include Previous Statement Balance (\$107.33), EFT Payment (-107.33), Monthly Charges (America's Top 200, HBO & STARZ, etc.), Taxes (State/Local Tax).

Your monthly statement is mailed 15 days before your service period begins. Your balance is due by the "Total Due By" date stated on your statement, which is approximately 20 days after your statement is mailed.

Any changes you make to your service in the middle of your service period will result in partial month charges for added services and partial month credits for discontinued services.

Other Charges table listing fees such as Agent Assistance Fee, Service Charge, Remove Programming, Access Fee, etc.



Taxes
A taxable equipment rental fee of \$9 for the first leased receiver activated is included in your promotional base programming package price. The tax attributable to this fee has been included in the Taxes section in the Detailed Activity.

Closed Caption
Closed Caption Contact Info: 888-809-1143, Fax 720-514-7880, or closedcaption@dishnetwork.com.

SB7AF008

- Sign me up for AutoPay
By checking this box, providing your email address and signing below, you are authorizing your financial institution to automatically pay your DISH Network balance on your future due dates from the account listed with your enclosed check. You will automatically receive your monthly statement by email.
I want AutoPay but continue to have my monthly bill sent by regular mail as well

Email Address: _____

(We respect your privacy and we will not sell your email and you will not receive any promotional emails unless you request at dishnetwork.com/myaccount.)

Signature: _____

By signing above, I hereby authorize DISH Network to automatically charge this bank account for all future charges including but not limited to monthly programming Pay-Per-View, early termination and equipment fees. I understand that all future bills will automatically be presented to this bank account on my billing due date. I acknowledge I must contact DISH Network at 1-800-894-3131 at least 7 days prior to my billing due date to allow time for any billing changes to reflect on my statement. I further understand that by providing an email address, I will receive notification of when I can view my bill at dishnetwork.com/myaccount or on Dish 10ME Channel 100.

SC4AFVP3

DSH0016



Your DISH Network Statement

June 28, 2010

Page 1 of 4

DEPT 0063 PALATINE IL 60955-0063
8255 9000 NO RP 28 06292010 YNNYYY 01 026673

[REDACTED]
[REDACTED]
AIKEN SC [REDACTED]

Account Holder: [REDACTED]
Account Number: 8255 90 941 3963627
Service Address: [REDACTED]
AIKEN SC [REDACTED]



Services from 07/13/10 - 08/12/10

Account Summary

Previous Balance	\$ 129.52
Payment - Thank you	-129.52
Current Charges	129.52



See details on the back

Contact Us

- Online: dishnetwork.com/faq
- Email: care@dishnetwork.com
- Phone: 1-800-894-9131

▼ If paying by mail, detach here and send the bottom return portion with your payment in the enclosed envelope. ▼



Payment Options

To pay for this month's bill:

- By check - Write your account number on your check and return this portion
- By credit/debit card -
Go to dishnetwork.com/myaccount

To set up AutoPay with Paperless Billing:

- By check - Fill out the reverse side of this form
- By credit/debit card -
Go to dishnetwork.com/myaccount

Account Holder: [REDACTED]
Account Number: [REDACTED]
Billing Address: [REDACTED]
AIKEN SC [REDACTED]

Amount Enclosed: \$ _____

DISH NETWORK
PO BOX 105169
ATLANTA GA 30348-5169



825590941396362700129528

DSH0017

3038



8255 9000 NO RP 28 06292010 YYNNYY 01 026673

Account Holder: [REDACTED]
Account Number: [REDACTED]
Statement Date: June 28, 2010

Table with columns: Service Date(s), Detailed Activity, Amount. Rows include Jun 02 (Previous Balance \$129.52, Credit Card Payment -129.52, Total \$0.00), Jul 13 - Aug 12 (Monthly Charges: America's Everything Pak 99.99, HD Platinum 10.00, Service Plan 6.00, DVR Service 6.00, HD 250 Free 0.00, Total \$121.99), Jun 28 (Taxes: State/Local Tax 7.53).

Your monthly statement is mailed 15 days before your service period begins. Your balance is due by the "Total Due By" date stated on your statement, which is approximately 20 days after your statement is mailed.

Any changes you make to your service in the middle of your service period will result in partial month charges for added services and partial month credits for discontinued services.

Other Charges

- Service Access Fee - Allows for access to specialty programming \$ 6.00
Late Charge \$ 5.00
Reconnect Charge \$20.00
Returned Payment Charge \$10.00
Shipping and Handling \$15.00
Transaction Fee - Applied for agent-handled transactions
Removing programming, ordering PPV, Agent Payment Handling \$ 5.00
Removing Adult Programming \$20.00

Taxes

A taxable equipment rental fee of \$9 for the first receiver activated is included in your promotional base programming package price. The tax attributable to this fee has been included in the Taxes section in the Detailed Charges section.

Closed Caption

Closed Caption Contact Info: 800-809-1143, Fax 720-514-7666, or closedcaption@dishnetwork.com. Written complaints: Mercedes Melzer, Closed Caption Compliance Manager, P.O. Box 9040, Littleton, CO 80120.



SB1AF0A7

Input box for Sign me up for AutoPay

Sign me up for AutoPay

By checking this box, providing your email address and signing below, you are authorizing your financial institution to automatically pay your DISH Network balance on your future due dates from the account listed with your enclosed check. You will automatically receive your monthly statement by email.

Input box for I want AutoPay but continue to have my monthly bill sent by regular mail as well

I want AutoPay but continue to have my monthly bill sent by regular mail as well

Email Address: _____

(We respect your privacy and we will not sell your email and you will not receive any promotional emails unless you request at dishnetwork.com/myaccount.)

Signature: _____

By signing above, I hereby authorize DISH Network to automatically charge this bank account for all future charges including but not limited to monthly programming Pay-Per-View, early termination and equipment fees. I understand that all future bills will automatically be presented to this bank account on my billing due date. I acknowledge I must contact DISH Network at 1-800-894-1131 at least 7 days prior to my billing due date to allow time for any billing changes to reflect on my statement. I further understand that by providing an email address, I will receive notification of when I can view my bill at dishnetwork.com/myaccount or on Dish! (DVR, Channel 10)

SC4AFVP3

DSH001



8255 9000 NO RP 28 06292010 YYNNYY 01 026673

Account Holder: [REDACTED]
Account Number: [REDACTED]
Statement Date: June 28, 2010

ClubDISH *Exclusive Offer!*

Dear VICKI REINEY:

Spread the Word

Get \$50 every time you refer a friend
(\$5 credit on your bill for 10 months)

Plus, get 5 FREE Pay-Per-View movies with your first referral.



Simply give the Gift Certificate below to a friend!

Sign up today and get a bonus \$50 credit from DISH Network*

Get lower prices and better TV.

Now Get 120 Top Channels including HD channels

\$24.99/mo for 12 months (with agreement)

- FREE HD For LIFE
- FREE HBO & SHOWTIME for 3 months (8 CHANNELS & 10 CHANNELS)
- FREE Installation
- FREE DVR (DVR is leased, (\$6.00/mo. DVR Service fee applies) Offer requires Agreement and AutoPay with Paperless Billing.)

Promotion Codes: Ordering Direct: DIRCDFDHA24 - Ordering Retailer: RETCDFDHA24

*Requires Agreement. Restrictions apply. see reverse for details.

VICKI REINEY has referred you to the home of the lowest all-digital price nationwide.

Use this certificate number to get this deal.

DRH112591406

OFFER EXPIRES 9/28/10

Get DISH Network Today

Call 1-888-253-5853

Or visit www.dish.com

Visit your local participating Retailer



CLBDISH040

sa5a/r9

DSH0019



8255 9000 NO RP 28 06292010 YYNNYY 01 026673

Account Holder: [REDACTED]
Account Number: [REDACTED]
Statement Date: June 28, 2010

Hey, did you know you can get a \$50 credit?
Flip this over to learn more.



Don't forget you can also receive \$50 if your dentist, mechanic
or local restaurant signs up for DISH Network for their business.

To receive more ClubDISH cards:
Call 1-888-920-GIFT(4438) or
visit www.dishnetwork.com/clubdish

Referred customer, as a first-time DISH Network residential or commercial customer, must redeem Gift Card with a valid Authorization Number through a local participating Retailer or other provider or by calling 1-888-920-GIFT (4438). Referred customer must order, install and activate programming by 9/28/10. New account must be active 31 days for you to be eligible to receive \$50 in credits. Please allow 8-10 weeks following the start of eligibility for your first \$5 credit to be reflected on your DISH Network account and your ClubDISH Membership benefits to begin. Maximum of 5 referrals (up to \$250 in credits) per calendar year. Some ClubDISH Member benefits may not be available for commercial accounts or accounts billed for DISH Network services by a third party. Other restrictions apply. We reserve the right to amend or modify the ClubDISH program at any time and in any way (including adjustment to the amount of credits earned for each referral) or discontinue the program without advanced notice. © 2010, DISH Network L.L.C. All rights reserved.



Residential Customers

Requires 24-month agreement and credit qualification. If service is terminated before end of 24 months, a cancellation fee of \$17.50 per month remaining will be charged. Programming credits apply during first 12 months. Free HD for life of current account; requires Agreement, AutoPay with Paperless Billing, HBO/Showtime offer requires AutoPay with Paperless Billing; credits apply during first 3 months (312 hours); customer must downgrade or free-current price applied. Requires continuous enrollment in AutoPay and Paperless Billing. All equipment is leased, and must be returned to DISH Network upon cancellation or as equipment fee will be charged. Limit 6 tumors per account; lease upgrade fee will apply for select receivers; additional monthly fees apply for each receiver added beyond first. First-time DISH Network customers only. HD programming requires HD television. All prices, packages and programming subject to change without notice. Offer is subject to the terms of the Promotional and Residential Customer Agreements. Local channels may not be available in all areas.

Commercial Customers

Promotions are available for qualifying commercial customers, and will vary based on type of account. Restrictions will apply, and may include a commitment and early cancellation fee. Equipment may be leased. Please call 1-800-454-6819 for information.

In order to participate, you must be a first-time DISH Network residential or commercial customer and provide a valid, original ClubDISH Gift Card from a current DISH Network customer. ClubDISH Gift Cards may be redeemed through a local participating Retailer or other provider. Participating Retailers may require additional terms and conditions. You must order, install and activate programming by 9/28/10. Gift Cards may not be redeemable through all providers. ClubDISH Gift Cards are non-transferable, not redeemable for cash and non-refundable. Some ClubDISH Member benefits may not be available to commercial accounts, or to customers being billed for DISH Network services through a third party. © 2010, DISH Network L.L.C. All rights reserved. HBO® and related channels and service marks are the property of Home Box Office, Inc. SHOWTIME and related marks are trademarks of Showtime Networks Inc., a CBS company.

00561wD

DSH0020

3041



Your DISH Network Statement

December 16, 2010

Page 1 of 4

DEPT 0063 PALATINE IL 60055-0063
8255 0300 NO RP 16 12172010 NNNNNY 01 000432

[REDACTED]
[REDACTED]
VARNVILLE SC [REDACTED]

Account Holder: [REDACTED]
Account Number: [REDACTED]
Service Address: [REDACTED]
VARNVILLE SC [REDACTED]



Did you forget...
We have not received payment for your last statement. Please pay this amount immediately to avoid service interruption and additional late fees. If you have made your payment within the past 7 - 10 days, thank you.



Avoid missed payments with AutoPay.
Enroll in AutoPay with Paperless Billing to save time and money and make sure you don't miss a minute of programming. To sign up or to make a one time payment online, log in to your account at www.dishnetwork.com/myaccount.

Looking for a way to save each month? Call us at 1-888-337-3474 and let one of our customer service specialists review your account and get the right programming to fit your budget.

Service Period 01/01/11 - 01/31/11

Account Summary

Previous Statement Balance	\$ 199.20
Payment - Thank you	-83.88
Statement Balance	146.02

[REDACTED]



See details on the back

Contact Us

- Online: dishnetwork.com
- Email: care@dishnetwork.com
- Phone: 1-800-894-9131

▼ If paying by mail, detach here and send the bottom return portion with your payment in the enclosed envelope. ▼



Payment Options

To pay for this month's bill:

- By check - Write your account number on your check and return this portion
- By credit/debit card -
Go to dishnetwork.com/myaccount

To set up AutoPay with Paperless Billing:

- By check - Fill out the reverse side of this form
- By credit/debit card -
Go to dishnetwork.com/myaccount

Account Holder: [REDACTED]
Account Number: [REDACTED]
Billing Address: [REDACTED]
VARNVILLE SC [REDACTED]

[REDACTED]

Amount Enclosed: \$ _____

DISH NETWORK
PO BOX 105169
ATLANTA GA 30348-5169



825503041001431200261347

DSH0021

3042



8255 0300 NO RP 16 12172010 NNNNNY 01 000432

Account Holder: [REDACTED]
Account Number: [REDACTED]
Statement Date: December 16, 2010

Table with columns: Service Date(s), Detailed Activity, Amount. Rows include Previous Statement Balance (\$199.20), 1-Time EFT Payment (-83.88), Monthly Charges (America's Top 250, Hunting Trails Game, DVR Service), Other Charges and Credits (Late Charge), Pay-Per-View (PPV CH.498, THE EXPENDABLES, etc.), Taxes (State/Local Tax (Sales)).

About your DISH Network Statement

Your monthly statement is mailed 15 days before your service period begins. Your balance is due by the 'Total Due By' date shown on your statement, which is approximately 20 days after your statement is mailed.

Any changes you make to your service in the middle of your service period will result in partial month charges for added services and partial month credits for discontinued services.

Explanation of Detailed Activity

Other Charges

Table listing other charges: Agent Assistance Fee, Payment by Agent, PPV Order by Agent, Service Charge, Remove Programming, Remove Adult Programming, Access Fee, Late Payment, Restart Fee, Returned Check/EFT, Shipping and Handling.

Taxes

A taxable equipment rental fee of \$9 for the first leased receiver activated is included in your promotional base programming package price. The tax attributable to this fee has been included in the Taxes section in the Detailed Activity.

Closed Caption

Closed Caption Contact Info: 888-808-1143, Fax 720-614-7660, or closedcaption@dishnetwork.com. Written complaints: Mercedes Metzger, Closed Caption Compliance Manager, P.O. Box 9040, Littleton, CO 80120.

SB7AF009



Input box for Sign me up for AutoPay

Sign me up for AutoPay

By checking this box, providing your email address and signing below, you are authorizing your financial institution to automatically pay your DISH Network balance on your future due dates from the account listed with your enclosed check. You will automatically receive your monthly statement by email.

Input box for I want AutoPay but continue to have my monthly bill sent by regular mail as well

I want AutoPay but continue to have my monthly bill sent by regular mail as well

Email Address: _____

(We respect your privacy and we will not sell your email and you will not receive any promotional emails unless you request at dishnetwork.com/myaccount.)

Signature: _____

By signing above, I hereby authorize DISH Network to automatically charge this bank account for all future charges including but not limited to monthly programming Pay-Per-View, early termination and equipment fees. I understand that all future bills will automatically be presented to this bank account on my billing due date. I acknowledge I must contact DISH Network at 1-800-894-9131 at least 7 days prior to my billing due date to allow time for any billing changes to reflect on my statement. I further understand that by providing an email address, I will receive notification of when I can view my bill at dishnetwork.com/myaccount or on Dish@HOME Channel 100.

SC4AFVP3



8255 0300 NO RP 16 12172010 NNNHY 01 000432

Account Holder:
Account Number:
Statement Date:

[REDACTED]
December 16, 2010

'Tis The Season For Giving

It pays to refer.



1. Refer a friend to DISH Network by giving them the \$50 gift certificate below.
2. Get \$50 off your bill when they join DISH Network. (\$5/mo for 10 months).

Refer up to 5 Friends per year for a total
Savings of \$250!

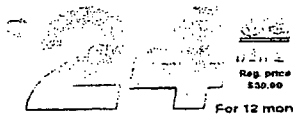


Simply give the Gift Certificate below to a friend!

Friends and Family

Use this certificate to get \$50 off your first bill in addition to the great offer below.

Get Over 120 Top Channels



and



Offer requires 24-month Agreement and AutoPay with Paperless Billing.

Act now and also get:

FREE
HBO & SHOWTIME
For 3 months.
Over 18 channels including HD.

FREE
DVR
(DVR is based on \$600/mo. DVR Service fee applies.)

FREE
Installation
in up to 8 rooms

Get DISH Network Today!

Call: 1-888-253-5853

Visit: dish.com/friend

Visit: your local participating Retailer

Use this certificate number to get this deal.

DRH350522533

HURRY, OFFER ENDS 1/31/11!

Be sure to mention an offer code:
Direct: 01DIRCD
Retail: 20RETAILCD



CLBDSH06

sabel05a

DSH0023



8255 0300 NO RP 16 12172010 NNNNNY 01 000432

Account Holder:
Account Number:
Statement Date:

[Redacted]
[Redacted]
December 16, 2010

You deserve a Reward

Don't forget, in addition to referring your friends and family, you can also receive \$50 if your dentist, mechanic or local restaurant signs up with DISH Network for their business.



To receive more gift certificates:

Call 1-888-920-GIFT(4438) or
visit dish.com/refer



Please allow 8-10 weeks following the start of eligibility for your first 15 credits to be reflected on your DISH Network account and your ClubDISH Membership benefits to begin. Maximum of 5 referrals (up to \$250 in credits) per order per year. Some ClubDISH Member benefits may not be available for commercial accounts or accounts billed for DISH Network services by a third party. Other restrictions apply. We reserve the right to amend or modify the ClubDISH program at any time and in any way (including adjustment to the amount of credits earned for each referral) or discontinue the program without advanced notice. You'll receive 5 Pay-Per-View certificates (value of up to \$6.99 each) which must be used within 90 days. Requires an online account on dishnetwork.com to receive certificates. Not valid for sporting or other events. PPVOD or VOD, monetary redemption or bill credit. Certificates cannot currently be used when ordering by remote control.

Referred customer, as a first-time DISH Network residential or commercial customer, must redeem Gift Card with a valid Authorization Number through a local participating Retailer or other provider or by calling 1-888-920-GIFT (4438). Referred customer must order, install and activate programming by 1/31/11. In order to be valid ClubDISH Gift Card must be presented at time of order for service, prior to activation. Offer must be redeemed prior to installation and activation of DISH Network account. New account must be active 31 days for you to be eligible to receive \$50 in credits. © 2010 DISH Network L.L.C. All rights reserved.



Call 1-888-253-5853
Visit dish.com/friend

Residential Customers: Requires 24-month agreement and credit qualification. If service is terminated before end of 24 months, a cancellation fee of \$175.00 per month remaining will be charged. Programming credits apply during first 12 months. \$10/mo HD add-on fee waived for life of contract; requires Agreement, AutoPay with Paperless Billing, HBO/Showtime offer requires AutoPay with Paperless Billing; credits apply during first 3 months (\$12 value); customer must downgrade or free-current price applies. Requires continuous enrollment in AutoPay and Paperless Billing. All equipment is leased, and must be returned to DISH Network upon cancellation or an equipment fee will be charged. Limit 6 users per contract; base upgrade fee will apply for select receiving; additional monthly fees apply for each receiver added beyond the first. First-time DISH Network customers only. HD programming requires HD television. All prices, packages and programming subject to change without notice. Offer is subject to the terms of the Promotional and Residential Customer Agreements. Local channels may not be available in all areas.

Commercial Customers: Promotions are available for qualifying commercial customers, and will vary based on type of account. Restrictions will apply, and may include a commitment and early cancellation fee. Equipment may be leased. Please call 1-800-454-0843 for information. In order to participate, you must be a first-time DISH Network residential or commercial customer and provide a valid, original ClubDISH Gift Card from a current DISH Network customer. In order to be valid ClubDISH Gift Card must be presented at time of order for service, prior to activation. Offer must be redeemed prior to installation and activation of DISH Network account. ClubDISH Gift Cards may be redeemed through a local participating Retailer or other provider. Participating Retailers may require additional terms and conditions. You must order, install and activate programming by 1/31/11. Gift Cards may not be redeemable through all providers. ClubDISH Gift Cards are non-transferable, not redeemable for cash and non-refundable. Some ClubDISH Member benefits may not be available to commercial accounts, or to customers being billed for DISH Network services through a third party. © 2010 DISH Network L.L.C. All rights reserved. HBO and related channels and service marks are the property of Home Box Office, Inc. SHOWTIME and related marks are trademarks of Showtime Networks Inc., a CBS company.

sab08sb

DSH0024

2005 Original

	DOR	DISH	EVERYWHERE
GUIDES	139,249	139,249	11,418,303
EQUIPMENT	321,420	319,374	28,193,600
LEASES	6,669,978	6,669,978	474,751,659
SERVICES	13,617,930	5,527,873	127,592,625
GAIN/(LOSS)	475,175	475,175	27,081,001
OTHER	2,693,578	2,693,578	504,923,758
PROGRAMMING	111,629,561	-	8,255,944,733
INTEREST	-	-	34,541,388
RENT	-	-	11,769
ROYALTY	-	-	-
ELIMS	(8,092,103)	-	-
TOTALS	<u>127,454,788</u>	<u>15,825,227</u>	<u>9,464,458,836</u>
SALES FACTOR	<u>1.3467%</u>	<u>0.1672%</u>	

DSH0009

3046



2006 2nd Amended

	<u>DOR</u>	<u>DISH</u>	<u>EVERYWHERE</u>
GUIDES	118,724	118,274	9,768,618
EQUIPMENT	210,577	210,359	15,858,890
LEASES	9,010,138	9,010,138	679,271,933
SERVICES	7,986,825	7,987,044	608,850,063
GAIN/(LOSS)	(427,235)	(427,235)	(34,176,915)
OTHER	4,301,581	4,301,581	317,566,819
PROGRAMMING	116,659,696	-	8,445,992,810
INTEREST	-	-	121,443,279
RENT	-	-	-
ROYALTY	-	-	-
ELIMS	-	-	-
TOTALS	<u>137,860,306</u>	<u>21,200,161</u>	<u>10,164,575,497</u>
SALES FACTOR	<u>1.3563%</u>	<u>0.2086%</u>	

2007 2nd Amended

	<u>DOR</u>	<u>DISH</u>	<u>EVERYWHERE</u>
GUIDES	101,362	101,362	8,463,280
EQUIPMENT	711,265	711,265	174,226,881
LEASES	11,590,868	11,590,868	856,350,782
SERVICES	15,591,584	15,591,584	1,114,727,933
GAIN/(LOSS)	(1,610,772)	(1,610,772)	(120,782,033)
OTHER	4,117,531	4,117,528	288,053,885
PROGRAMMING	117,105,082	-	8,367,626,320
INTEREST	-	-	102,865,234
RENT	-	-	-
ROYALTY	-	-	447,469
ELIMS	<u>9,281,056</u>	<u>(16,926,840)</u>	<u>-</u>
TOTALS	<u>156,887,976</u>	<u>13,574,995</u>	<u>10,791,979,751</u>
SALES FACTOR	<u>1.4537%</u>	<u>0.1258%</u>	

2008 3rd Amended

	<u>DOR</u>	<u>DISH</u>	<u>EVERYWHERE</u>
GUIDES	-	85,394	7,132,767
EQUIPMENT	535,194	198,719	138,749,435
LEASES	-	-	-
SERVICES	12,926,310	13,871,409	962,352,292
GAIN/(LOSS)	-	-	-
OTHER	19,107,895	33,557	342,126,010
PROGRAMMING	144,399,725	13,786,175 *	10,152,386,619
INTEREST	-	-	51,716,576
RENT	-	-	352,678
ROYALTY	-	-	602
ELIMS	<u>(12,926,310)</u>	<u>-</u>	<u>-</u>
TOTALS	<u>164,042,814</u>	<u>27,975,254</u>	<u>11,654,816,979</u>
SALES FACTOR	<u>1.4075%</u>	<u>0.2400%</u>	

* Local Programming

2009 Amended

	<u>DOR</u>	<u>DISH</u>	<u>EVERYWHERE</u>
GUIDES	-	-	-
EQUIPMENT	34,312	-	-
LEASES	-	-	-
SERVICES	21,491,249	21,491,249	1,245,491,273
GAIN/(LOSS)	-	-	(196,850)
OTHER	30,277,894	21,912	2,290,187,726
PROGRAMMING	134,653,205	16,897,250 *	8,895,025,654
INTEREST	-	-	13,974,916
RENT	-	-	979,647
ROYALTY	-	-	-
ELIMS	-	-	-
TOTALS	<u>186,456,660</u>	<u>38,410,411</u>	<u>12,445,462,366</u>
SALES FACTOR	<u>1.4982%</u>	<u>0.3086%</u>	

* Local Programming

2010 Amended

	<u>DOR</u>	<u>DISH</u>	<u>EVERYWHERE</u>
GUIDES	-	-	-
EQUIPMENT	29,417	-	-
LEASES	-	-	-
SERVICES	23,461,495	23,497,495	1,287,955,821
GAIN/(LOSS)	(68,810)	-	-
OTHER	54,422,909	17,266	3,385,442,266
PROGRAMMING	137,316,455	12,692,075 *	8,640,530,035
INTEREST	-	-	13,743,580
RENT	-	-	-
ROYALTY	-	-	-
ELIMS	-	-	-
TOTALS	<u>215,161,466</u>	<u>36,206,836</u>	<u>13,327,671,702</u>
SALES FACTOR	<u>1.6144%</u>	<u>0.2717%</u>	

* Local Programming

Returns Filed By Dish DBS Corporation fka EchoStar DBS Corporation for the audit years (12/05-12/10)

Year	Type Return	SC Apportionment Factor	Reason for Amendment	Type of Apportionment Factor	When Gross Receipts Ratio Used, the amount of "SC Receipts" Reflected on line 1 of Schedule H-2
2005	Original	0.2384%		4 Factor	N/A
2006	Original	0.2086%		Gross Receipts	21,200,161
2007	Amended (1)	0.1258%		Gross Receipts	13,574,995
2007	Amended	0.1258%	Incorporate Federal RAR adjustments	Gross Receipts	13,574,995
2008	Original	0.2362%		Gross Receipts	27,534,405
2008	1st amended	0.2362%	Application of Job credits Reduced to 50% of Corporate Liability	Gross Receipts	27,534,405
2008	2nd amended	2.2251%	Apportionment method changed to 4 factor and other changes	4 factor	N/A
2008	3rd Amended	0.2400%	Apportionment method changed to gross receipts and other changes	Gross Receipts	27,975,254
2009	Original	4.2705% (2)		Gross Receipts	531,477,876
2009	1st Amended	0.3086%	SC method of Sourcing SC Gross Receipts change.	Gross Receipts	38,410,411
2010	Original	1.5152%		Gross Receipts	201,946,258
2010	1st Amended	0.2717%	SC method of Sourcing SC Gross Receipts/Sales changed.	Gross Receipts	36,206,836

(1) The taxpayer checked the amended return box, but this appears to be the original return as the return signed date is 9/13/07 which is within the original extended filing period.

(2) The taxpayer filed electronically for this year. The ratio reflected on the return is 4.000% because our electronic filing system does show any percentages less than 1%. The actual gross receipts ratio used by the taxpayer was 4.2705%.



State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

June 29, 2012

Dish DBS Corporation fka EchoStar DBS
Corporation & Affiliates
9601 South Meridian Blvd
Englewood, CO 80112

Tax Type: Corp. Income/License
Periods: 12/31/04-12/31/10
File #: [REDACTED]
Response Date: September 29, 2012
Audit #: 00/36/7160

Attn: Jean Marrocco
Tax Manager

Sir or Madam:

The audit of the above referenced tax return(s) has been completed by the Audit Services Division of the South Carolina Department of Revenue. Enclosed is a "Report of Field Audit" (AS-54) which explains our "Proposed Notice of Adjustment".

If you agree with the changes detailed in the enclosed report, the balance shown to be due on Form AS-54 should be remitted to this office within thirty (30) days from the date of this letter, to avoid additional interest and penalties, if applicable. Please include a copy of the AS-54 with your check to insure proper processing.

If you agree with the Division's adjustments but are unable to make full payment at this time, please complete the enclosed Waiver of Restriction on Assessment (SC 870) and return it to this office within thirty (30) days from the date of this letter. Upon receipt of this document, a "Final Assessment" will be issued.

If you disagree with any of the adjustments of tax, interest, or penalties that have been proposed by the Division, a written protest must be submitted to this office by the response date stated above.

If you do not respond to this letter by the response date stated above, the Division will issue the "Final Assessment" and begin collection action.

Should you have any questions, please do not hesitate to call me at the number listed below.

Yours very truly,

S.C. DEPARTMENT OF REVENUE
LAW & COMPLIANCE

Earle Toole – Non-Resident Audit Supervisor
(803)898-5909
(803)896-0066 (fax)

/mb
Enclosure

Form Letter AS-54-PA (Rev. 8/95)



000329

AS-54

SOUTH CAROLINA DEPARTMENT OF REVENUE
Preliminary Draft of Potential Tax Due

TAXPAYER: Dish DBS Corporation fka EchoStar DBS Corporation & Affiliates
 ADDRESS: 9601 South Meridian Blvd. Englewood, CO 80112
 FEI #: [REDACTED]
 FILE #: [REDACTED]
 PERIOD: 12/31/04-12/31/10
 DATE: 6/29/12
 Auditor: SHARPE Goleblowski

INTEREST COMPUTED TO: 8/1/2012

INCOME TAX:				
PERIOD ENDED	INCOME TAX	INTEREST	PENALTY	TOTALS
12/31/2004	-	\$0	\$0	\$0
12/31/2005	365,040	\$145,680	\$91,260	\$601,980
12/31/2006	400,887	\$118,388	\$100,222	\$619,497
12/31/2007	313,237	\$61,872	\$78,309	\$453,418
12/31/2008	(121,679)	(\$2,877)	\$0	(\$124,556)
12/31/2009	(439,263)	(\$5,741)	\$0	(445,004)
12/31/2010	26,064	\$1,240	\$6,516	33,820
TOTALS	544,286	\$318,562	\$276,307	\$1,139,155

LICENSE FEE:				
PERIOD ENDED	LICENSE FEE	INTEREST	PENALTY	TOTALS
12/31/2006	31,495	\$12,569	\$7,874	51,938
12/31/2007	38,602	\$11,400	\$9,650	59,652
12/31/2008	-	\$0	\$0	-
12/31/2009	-	\$0	\$0	-
12/31/2010	17,288	\$1,523	\$4,322	\$23,133
12/31/2011	3,165	\$151	\$0	\$3,316
TOTALS	\$ 90,550	\$25,643	\$21,846	\$ 138,039

SUMMARY:				
	TAX	INTEREST	PENALTY	TOTALS
INCOME TAX	\$544,286	\$318,562	\$276,307	\$1,139,155
LICENSE FEE	\$ 90,550	\$ 25,643	\$ 21,846	\$ 138,039
TOTALS	\$634,836	\$344,205	\$298,153	\$1,277,194

000330

S.C. Code Ann. § 12-54-25

Interest due on late taxes; applicable interest rate.

(A) If any tax is not paid when due, interest is due on the unpaid portion from the time the tax was due until paid in its entirety. For administrative convenience, the department may waive up to thirty days' interest.

(B) For purposes of this section, a tax is due on the last day provided for its payment, without regard for any extension of time for payment and without regard for or to any assessment under Section 12-60-910. Stamp taxes and any other tax for which no payment date is provided are due on the day the liability arises.

(C) *omitted*

(D) Except as preempted or superseded by federal law or inter-governmental compact such as the International Fuel Tax Agreement, the rate of interest on underpayments and overpayments is established by the department in the same manner and at the same time as the underpayment rate provided in Internal Revenue Code Sections 6621(a)(2) and 6622.

Penalty Added: Substantial Understatement:

Substantial understatement of tax: If the tax is understated by 10% or by \$5,000 (\$10,000 for C corporations), whichever is greater, an amount equal to 25% of the underpayment resulting from the understatement is added to the tax. For tax periods beginning after December 31, 2006, the penalty also applies to underpayments resulting from a substantial valuation misstatement. [S.C. Code Ann. §12-54-155.]

South Carolina Department of Revenue
 Recomputation of SC Net Income and Tax Due

TAXPAYER: Dish DBS Corporation fka EchoStar DBS Corporation & Affiliates
 FILE #: XXXXXXXXXX
 PERIOD: 12/31/04-12/31/10

SCHEDULE: A
 AUDITOR: - SHARPE Golebiowski
 DATE: 6/15/12

PERIOD ENDED:	Amended (1) Dec-04	(2) Dec-05	2nd Amended (2) Dec-06	2nd amended (2) Dec-07	2rd amended Dec-08	Dec-09
APPORTIONABLE INCOME PER RETURN:	240,643,475	626,565,233	698,602,262	943,524,869	1,230,356,895	633,785,548
ADJUSTMENTS:						
APPORTIONMENT INCOME AS ADJUSTED	240,643,475	626,565,233	698,602,262	943,524,869	1,230,356,895	633,785,548
SC APPORTIONMENT RATIO (Schedule B)	1.2702%	1.3467%	1.3563%	1.4537%	1.4075%	1.4982%
SC PROPORTION ALLOCABLE TO SC	3,056,716	8,437,750	9,475,017	13,716,455	17,317,407	9,495,311
Single Factor Phase-In Adjustment	-	-	-	-	-	-
SC NET INCOME	3,056,716	8,437,750	9,475,017	13,716,455	17,317,407	9,495,311
SC NOL (3)	(869,096)					
TAXABLE NET INCOME	2,187,620	8,437,750	9,475,017	13,716,455	17,317,407	9,495,311
TAX RATE	5%	5%	5%	5%	5%	5%
TAX DUE	109,381	421,888	473,751	685,823	865,870	474,766
TAX CREDIT (Job Tax Credits) (50% of Tax Due)	-	-	-	(342,911)	(432,935)	(237,383)
BALANCE	109,381	421,888	473,751	342,911	432,935	237,383
TAX PREVIOUSLY PAID	-	(56,848)	(72,864)	(29,674)	(554,614)	(678,646)
UNDERPAYMENT (OVERPAYMENT)	109,381	365,040	400,887	313,237	(121,679)	(439,263)
Expired Six Year Statute of Limitations Adjusted Amount Due 12/04	(109,381)					
	-					

000332

3056

South Carolina Department of Revenue
 Recomputation of SC Net Income and Tax Due

TAXPAYER: Dish DBS Corporation fka EchoStar DBS Corporation & Affiliates
 FILE #: XXXXXXXXXX
 PERIOD: 12/31/04-12/31/10

SCHEDULE: A
 AUDITOR: SHARPE Goleblowski
 DATE: 6/15/12

Effective with the 12/010 Return the Taxpayer filed a "SC Consolidated Return" with the taxpayer being the Lead Corporation and EchoStar Corporation and EchoStar Broadcasting Corporation included along with the taxpayer in the SC Consolidated Return:

PERIOD ENDED:	Dish DBS Corporation	EchoStar	EchoStar	Consolidated Total
	FEI no. 84-1328967	Corporation FEI no. 26-1232727	Broadcasting Corporation FEI no. 26-3452359	
	Dec-10	Dec-10	Dec-10	Dec-10
APPORTIONABLE INCOME PER RETURN:	1,087,225,687	51,473,093	(13,341,222)	
ADJUSTMENTS:				
APPORTIONMENT INCOME AS ADJUSTED	1,087,225,687	51,473,093	(13,341,222)	
SC APPORTIONMENT RATIO (4)	1.6144%	1.4133%	0.4390%	
SC PROPORTION ALLOCABLE TO SC	17,552,133	727,469	(58,565)	
Single Factor Phase-In Adjustment	-	-	-	
SC NET INCOME	17,552,133	727,469	(58,565)	
SC NOL (5)			(277,194)	
TAXABLE NET INCOME	17,552,133	727,469	(335,759)	17,943,843
TAX RATE				5%
TAX DUE				897,192
TAX CREDIT (Job Tax Credits) (50% of Tax Due)				(448,596)
BALANCE				448,596
TAX PREVIOUSLY PAID				(422,532)
UNDERPAYMENT (OVERPAYMENT)				26,064

(1)
Audit Extended Back to the Tax Year 12/04 :

The Department audits years closed to assessment or refund for determining the correctness of a net operating loss which is claimed as an offset against income in an open year.

000333

3057

South Carolina Department of Revenue
 Recomputation of SC Net Income and Tax Due

TAXPAYER: Dish DBS Corporation fka EchoStar DBS Corporation & Affiliates
 FILE #:
 PERIOD: 12/31/04-12/31/10

SCHEDULE: A
 AUDITOR: SHARPE Golebiowski
 DATE: 6/15/12

(2)
Six Year Statute of Limitation Open for the 12/05-12/07 Years:

The Statute of limitations is open for the 12/05-12/07 years since the understatement of taxes is greater than 20%:

§ 12-54-85 – Time limitation for assessment of taxes or fees; exceptions.
 (C) Taxes may be determined and assessed after the thirty-six month limitation if:
 (3) there is a twenty percent understatement of the total taxes required to be shown on the return or document. The taxes in this case may be assessed at any time within seventy-two months from the date the return or document was filed or due to be filed, whichever is later;

Understatement of Tax is Greater Than 20% for the audit years 12/05-12/07:

	Understatement of Tax Reported			Average Understatement
	Dec-05	Dec-06	Dec-07	
Tax Reported	56,848	72,864	29,674	
Tax Due	421,888	473,751	342,911	
Percentage of Tax Underreported	86.53%	84.62%	91.35%	87.50%

(3) SC NOL Computation

Entity	Tax Year NOL Generated	Amount of SC NOL	NOL Utilized 12/31/02	NOL Utilized 12/31/2004	NOL Carry Forward
Dish Network Services Corporation	12/31/1998	1,292			1,292
Dish Network Services Corporation	12/31/1999	15			15
Dish Network Services Corporation	12/31/2000	8,381			8,381
Dish Network Services Corporation	12/31/2001	911,816			911,816
Echosphere Corporation	12/31/2003	34,934			34,934
		956,438			956,438
	Utilized 12/31/02		(58,856)		(58,856)
	Utilized 12/31/02		(28,486)		(28,486)
	Carryover to 12/03				869,096
	Utilized 12/04			(869,096)	(869,096)
		956,438	(87,342)	(869,096)	-

000334

3058

South Carolina Department of Revenue
Recomputation of SC Net Income and Tax Due

TAXPAYER: Dish DBS Corporation fka EchoStar DBS Corporation & Affiliates
FILE #: [REDACTED]
PERIOD: 12/31/04-12/31/10

SCHEDULE: A
AUDITOR: SHARPE Golebiowski
DATE: 6/15/12

(4)

Refer to Audit Schedule B for The Gross Receipts Ratio for Dish DBS Corporation and EchoStar Broadcasting Corporation. EchoStar Corporation Correctly apportioned their SC income using the "4-Factor" Apportionment Ratio and the apportionment ratio was obtained from the SC 1120 as filed.

(5) For the 12/99 year, Echo Star Broadcasting Corporation filed a Separate SC return and had an Audited SC NOL Carry forward of 277,194

General Comments Regarding the Gross Receipts Apportionment Factor and How SC Sources Receipts:

Sourcing of Subscriber Receipts

The taxpayer is a satellite provider of cable services and rents and/or sells or provides, free of charge, equipment which allows Subscribers to receive cable programming.

The auditor feels the taxpayer's predominant business is selling access to cable programming (intangible property) via subscriber fees which are required before the cable programming can be accessed and 100% of SC subscriber receipts should be sourced to SC. See further Discussion Below.

Even if the access of the cable programming was classified as a purchase of services (as opposed to a purchase of intangibles), the auditor maintains that the income producing activity occurs for SC customers in SC where the taxpayer and/or affiliate/third party sells and/or installs the equipment to/for the SC customers which allows them to receive the satellite signal which enables the SC subscribers to access the cable programming. Since the income producing activity for the SC Subscriber receipts occurs in SC, 100% of the SC Subscriber receipts should be sourced to SC.

South Carolina Code of Law Sections dealing with the sourcing of services and Intangibles:

000335

3059

South Carolina Department of Revenue
Recomputation of SC Net Income and Tax Due

TAXPAYER: Dish DBS Corporation fka EchoStar DBS Corporation & Affiliates
FILE #: XXXXXXXXXX
PERIOD: 12/31/04-12/31/10

SCHEDULE: A
AUDITOR: SHARPE Golebiowski
DATE: 6/15/12

§ 12-6-2295 -- Items Included and excluded from terms "sales" and "gross receipts".

(3) receipts from the use of intangible property in this State including, but not limited to, royalties from patents, copyrights, trademarks, and trade names;

(5) receipts from services if the entire income-producing activity is within this State. If the income-producing activity is performed partly within and partly without this State, sales are attributable to this State to the extent the income-producing activity is performed within this State;

000336

3060

South Carolina Department of Revenue
Recomputation of SC Net Income and Tax Due

TAXPAYER: Dish DBS Corporation fka EchoStar DBS Corporation & Affiliates
FILE #:
PERIOD: 12/31/04-12/31/10

SCHEDULE: A
AUDITOR: SHARPE Golebiowski
DATE: 6/15/12

Excerpts from The Department's Corporate Income Tax Manual which discusses sourcing of intangible receipts and Service Receipts

Comment: Considering Lockwood Greene and Geoffrey, together, it appears that gross receipts are sourced to the state which is most significantly associated with the production of the income; e.g., personal services, where those services are performed; intangibles, where those intangibles are used in a business for the production of income.⁷⁸ This conclusion is consistent with the longstanding administrative policy of the Department, which was referenced in the Lockwood Greene case, that the gross receipts of loans from finance companies are sourced to the location of the companies' customers. ⁷⁸See also SC Tech. Adv. Memo. #94-2.

TO COMPUTE THE GROSS RECEIPTS RATIO IN ACCORDANCE WITH SECTION 12-6-2290 (PREVIOUSLY 12-7-1190) SOUTH CAROLINA CODE OF LAWS. TAXPAYERS WHOSE BUSINESS IS OTHER THAN DEALING IN TANGIBLE PERSONAL PROPERTY ARE REQUIRED TO APPORTION INCOME USING THIS RATIO.

SCCL, Section 12-6-2290:

If the principal profits or income of a taxpayer are derived from sources other than those described in Section 12-6-2250 or Section 12-6-2310, the taxpayer shall apportion its remaining net income using a fraction in which the numerator is gross receipts from within this State during the taxable year and the denominator is total gross receipts from everywhere during the taxable year. For purposes of this section, items included in gross receipts are as provided in Section 12-6-2295.

000337

3061

**SOUTH CAROLINA DEPARTMENT OF REVENUE
SUMMARY OF JOB CREDITS**

TAXPAYER: Dish DBS Corporation fka EchoStar DBS Corporation
 FILE #: [REDACTED]
 PERIOD: 12/31/04-12/31/10

SCHEDULE: A-1
 AUDITOR: Sharpe Golebiowski
 DATE: 6/15/12

SUMMARY OF JOB CREDITS EARNED, APPLIED AND CARRIED FORWARD¹

	12/31/2007	12/31/2008	12/31/2009	12/31/2010
CARRIED FORWARD CREDIT FROM PRECEDING YEARS				
SPARTANBURG COUNTY CREDIT (SCH A-1.1)	-	598,589	2,731,154	5,783,771
TOTAL CURRENT CREDITS AVAILABLE	941,500	2,565,500	3,290,000	2,723,000
APPLIED	941,500	3,164,089	6,021,154	8,506,771
CARRY FORWARD TO SUCCEEDING YEAR	(342,911)	(432,935)	(237,383)	(448,596)
	598,589	2,731,154	5,783,771	8,058,175

EXPLANATIONS

¹VALUATION ADJUSTMENT

The job credit carry forward amount of \$8,203,357 is reduced by \$145,182 to reflect to correct carryover amount of \$8,058,175. The adjustment is due to several things: (1) The taxpayer did not include the additional \$1,000 credit for being located in a multi-county industrial park in the 2007 and 2008 credit calculation, (2) The data provided did not support the number jobs reported on the 2007-2010 forms TC-4 as filed, and (3) The above carry forward calculation applies 1/2 of the taxes due after the other audit adjustments are made.

000338

3062

**SOUTH CAROLINA DEPARTMENT OF REVENUE
JOB CREDITS BY LOCATION**

TAXPAYER: Dish DBS Corporation fka EchoStar DBS Corporation
FILE #: [REDACTED]
PERIOD: 12/31/04-12/31/10

SCHEDULE A-1.1
AUDITOR: Sharpe Golebiowski
DATE: 6/15/12

COUNTY: SPARTANBURG

YEAR OF INCREASE	^{1,3} AVERAGE NUMBER OF JOBS		2006	2007	2008	2009	2010
	NUMBER OF JOBS	NUMBER OF JOBS INCREASED					
2006	269	269		269	269	269	269
2007	733	464			464	464	464
2008	1,104	371				371	371
2009	940	(164)				(164)	(164)
2010	778	(162)					(162)
NUMBER OF NEW JOBS			-	269	733	940	778
AMOUNT OF CREDIT²			3,500	3,500	3,500	3,500	3,500
MAXIMUM TENTATIVE CREDIT			-	941,500	2,565,500	3,290,000	2,723,000

**SOUTH CAROLINA DEPARTMENT OF REVENUE
JOB CREDITS BY LOCATION**

TAXPAYER: Dish DBS Corporation fka EchoStar DBS Corporation
 FILE #: XXXXXXXXXX
 PERIOD: 12/31/04-12/31/10

SCHEDULE A-1.1
 AUDITOR: Sharpe Golebiowski
 DATE: 6/15/12

EXPLANATIONS

1 AVERAGE NUMBER OF JOBS CALCULATION							
2006				2007			
	<u>Hire</u>	<u>Term</u>	<u>Total</u>		<u>Hire</u>	<u>Term</u>	<u>Total</u>
Beg			0	Beg			382
Jan	0	0	0	Jan	2	9	375
Feb	0	0	0	Feb	68	25	418
Mar	0	0	0	Mar	88.5	17	489.5
Apr	0	0	0	Apr	104.5	32.5	561.5
May	0	0	0	May	126	31	656.5
Jun	0	0	0	Jun	36	32	660.5
Jul	0	0	0	Jul	179.5	47	793
Aug	71	0	71	Aug	131	64	860
Sep	110	0	181	Sep	163	71	952
Oct	151	0	332	Oct	141	88	1005
Nov	47	0	379	Nov	77	60	1022
Dec	4	1	382	Dec	38	51.5	1008.5
		Total	1345			Total	8801.5
		Months	5			Months	12
		Average	269			Average	733
2008				2009			
	<u>Hire</u>	<u>Term</u>	<u>Total</u>		<u>Hire</u>	<u>Term</u>	<u>Total</u>
Beg			1008.5	Beg			1163
Jan	0	59	949.5	Jan	2	85	1080
Feb	89	77.5	961	Feb	0	26	1054
Mar	156	81.5	1035.5	Mar	0	42	1012
Apr	76	62	1049.5	Apr	2	30	984
May	59	63	1045.5	May	1	22	963
Jun	137	80	1102.5	Jun	2	24	941
Jul	85	58	1129.5	Jul	9	34	916
Aug	149.5	103	1176	Aug	3	29	890
Sep	116	82	1210	Sep	9	20	879
Oct	107	66	1251	Oct	1	26	854
Nov	29	100	1180	Nov	10	16	848
Dec	26	43	1163	Dec	32	12	868
		Total	13253			Total	11289
		Months	12			Months	12
		Average	1104			Average	940

**SOUTH CAROLINA DEPARTMENT OF REVENUE
JOB CREDITS BY LOCATION**

TAXPAYER: Dish DBS Corporation fka EchoStar DBS Corporation
 FILE #: XXXXXXXXXX
 PERIOD: 12/31/04-12/31/10

SCHEDULE A-1.1
 AUDITOR: Sharpe Golebiowski
 DATE: 6/15/12

¹AVERAGE NUMBER OF JOBS CALCULATION (Continued)

2010			
	Hire	Term	Total
Beg			868
Jan	20	17	871
Feb	6	17	860
Mar	1	16	845
Apr	2	28	819
May	0	40	779
Jun	0	25	754
Jul	1	30	725
Aug	35	32	728
Sep	25	31	722
Oct	29	32	719
Nov	72	30	761
Dec	32	39	754
	Total		9337
	Months		12
	Average		<u>778</u>

Further explanation of calculation:

All information used for the above calculations were taken from the raw data provided by the taxpayer's representative via email on 12/13/2011

The total number of employees hired was added to and the total number of employees terminated was subtracted from the previous months total jobs to derive any given month's total employees.

The number of employees hired/terminated in a given month was taken from the hire/termination dates indicated in the data. For example, an employee with a hire date of 1/5/2009 and a termination date of 5/12/2009 would increase the January 2009 total jobs by one (assuming the employee was full time) and decrease the May 2009 total jobs by one.

An employee was considered full time if the data indicated that the employee worked an average of 80 hours. If the data did not indicate that the employee worked an average of 80 hours, the employee was considered part-time.

²AMOUNT OF CREDIT PER EMPLOYEE

Moderately Developed County	2,500
Multi-County Industrial Park	1,000
Amount of Credit Per Employee	<u>3,500</u>

SOUTH CAROLINA DEPARTMENT OF REVENUE
JOB CREDITS BY LOCATION

TAXPAYER: Dish DBS Corporation fka EchoStar DBS Corporation
FILE #: XXXXXXXXXX
PERIOD: 12/31/04-12/31/10

SCHEDULE A-1.1
AUDITOR: Sharpe Golebiowski
DATE: 6/15/12

MINIMUM NUMBER OF JOBS REQUIRED TO QUALIFY FOR THE JOB TAX CREDIT

Dish DBS Corporation fka EchoStar Corporation is considered a "qualifying service-related facility" as defined by SC Code Section 12-6-3360(A):

§ 12-6-3360(A) – [Eff. until 1-1-2011.]
Job tax credit

- (A) Taxpayers that operate manufacturing, tourism, processing, warehousing, distribution, research and development, corporate office, qualifying service-related facilities, extraordinary retail establishment, qualifying technology intensive facilities, and banks as defined pursuant to this title are allowed an annual job tax credit as provided in this section. In addition, taxpayers that operate retail facilities and service-related industries qualify for an annual jobs tax credit in counties designated as least developed or distressed, and in counties that are under developed and not traversed by an interstate highway. As used in this section, "corporate office" includes general contractors licensed by the South Carolina Department of Labor, Licensing and Regulation. Credits pursuant to this section may be claimed against income taxes imposed by Section 12-6-510 or 12-6-530, bank taxes imposed pursuant to Chapter 11 of this title, and insurance premium taxes imposed pursuant to Chapter 7 of Title 38, and are limited in use to fifty percent of the taxpayer's South Carolina income tax, bank tax, or insurance premium tax liability. In computing a tax payable by a taxpayer pursuant to Section 38-7-90, the credit allowable pursuant to this section must be treated as a premium tax paid pursuant to Section 38-7-20.

Because Dish DBS Corporation is a qualified service-related facility, the Company must maintain at least 250 jobs or qualify under certain compensation requirements outlined in SC Code Section 12-6-3360(M)(13)(b).

§ 12-6-3360(A)(13)(b) – [Eff. until 1-1-2011.]
Job tax credit

- (13) "Qualifying service-related facility" means:
- (b) a business, other than a business engaged in legal, accounting, banking, or investment services or retail sales, which has a net increase of at least:
 - (i) two hundred fifty jobs at a single location;
 - (ii) one hundred twenty-five jobs at a single location and the jobs have an average cash compensation level of more than one and one-half times the lower of state per capita income or the per capita income in the county where the jobs are located;
 - (iii) seventy-five jobs at a single location and the jobs have an average cash compensation level of more than twice the lower of state per capita income or the per capita income in the county where the jobs are located; or
 - (iv) thirty jobs at a single location and the jobs have an average cash compensation level of more than two and one-half times the lower of state per capita income or the per capita income in the county where the jobs are located.

A taxpayer shall use the most recent per capita income data available as of the end of the taxable year in which the jobs are filled. Determination of the required number of jobs is in accordance with the monthly average described in subsection (F)

**SOUTH CAROLINA DEPARTMENT OF REVENUE
COMPUTATION OF THE GROSS RECEIPTS RATIO**

TAXPAYER: Dish DBS Corporation fka EchoStar DBS Corporation & Af SCHEDULE: B
 FILE #: [REDACTED] AUDITOR: SHARPE
 PERIOD: 12/31/08-12/31/11 DATE: 6/15/2012

000343

Dish DBS Corporation
 PERIOD ENDED:

	Dec-04	Dec-05	Dec-06	Dec-07	Dec-08	Dec-09	Dec-10
SC RECEIPTS (1)	106,051,421	127,454,788	137,860,306	156,887,976	164,042,814	188,456,660	215,161,466
TOTAL RECEIPTS (Per Return)	8,349,020,080	9,464,458,836	10,164,575,497	10,791,979,751	11,654,818,979	12,445,482,366	13,327,871,707
GROSS RECEIPTS RATIO	1.2702%	1.3487%	1.3563%	1.4537%	1.4075%	1.4982%	1.6144%

EchoStar Broadcasting Corporation

PERIOD ENDED:

	Dec-10
SC RECEIPTS (2)	900,779
TOTAL RECEIPTS (Per Return)	205,197,785
GROSS RECEIPTS RATIO	0.4390%

EXPLANATION:

TO COMPUTE THE GROSS RECEIPTS RATIO IN ACCORDANCE WITH SECTION 12-6-2290 (PREVIOUSLY 12-7-1190) SOUTH CAROLINA CODE OF LAWS. TAXPAYERS WHOSE BUSINESS IS OTHER THAN DEALING IN TANGIBLE PERSONAL PROPERTY ARE REQUIRED TO APPORTION INCOME USING THIS RATIO.

SOUTH CAROLINA DEPARTMENT OF REVENUE
COMPUTATION OF THE GROSS RECEIPTS RATIO

TAXPAYER: Dish DBS Corporation fka EchoStar DBS Corporation & AI SCHEDULE: B
 FILE #: [REDACTED] AUDITOR: SHARPE
 PERIOD: 12/31/06-12/31/11 DATE: 6/15/2012

000344

(1)
SC Gross Receipts Per Apportionment Work papers

Dish DBS Corporation

Company	Type Sales	12/31/2004	12/31/2005	12/31/2006	12/31/2007	12/31/2008	12/31/2009	12/31/2010
111	Guides	200,004	138,249	118,724	101,362			
111	DHP Equipment	295,768	319,374	210,359				
111	DD Leases	4,331,322	6,669,978	9,010,138	11,590,868			
111	Programming Services (Gross Sales/Subscriber Receipts)	87,674,049	110,701,696	116,425,190	117,105,082			
111	Other Income	2,269,507	2,689,300	4,301,581	3,638,821			
111	Gain/Loss Sale of Assets		475,383	(427,235)	(1,610,772)			
111	Commissions				478,765			
111	Merchandise Sales				1,269,955			
111	Service Income				15,567,878			
111	Sales Without State to Within State					144,399,725	134,853,205	137,316,455
111	Other Receipts					19,096,623	26,055,583	50,302,661
111	Receipts From Services						7,302,481	10,512,837
111	Miscellaneous Other						3,729,418	3,683,741
111	Adjusted Basis							(68,810)
113	Installation (Gross Receipts)	736,288	648,542	793,570				
113	Other Income	4,297	4,278					
113	Commissions							
113	Merchandise Sales				(55)			
113	Service Income				(558,690)			
113	Sales Within State to Within State				(89,111)			
113	Other Receipts					513,405		
113	Miscellaneous Other					11,272		
115							492,893	436,507
115	Installation Sales (Service Portion of Gross Receipts)	10,445,153	12,969,388	7,193,255				
115	Tangible Sales (Tangible portion of Gross Receipts)	58,387	2,046	218				
115	Gain/Loss Sale of Assets		(208)					
115	Inter-Co-Service Income-W/I				9,281,056			
115	Service Income				1,201			
115	Receipts From Services					12,926,310	14,188,768	12,948,658
177	Programming	36,646	29,358	63,845				

Computation of Gross Receipts Apportionment Ratio

SOUTH CAROLINA DEPARTMENT OF REVENUE
COMPUTATION OF THE GROSS RECEIPTS RATIO

TAXPAYER: Dish DBS Corporation Ika EchoStar DBS Corporation & AI SCHEDULE: B
 FILE #: [REDACTED] AUDITOR: SHARPE
 PERIOD: 12/31/00-12/31/11 DATE: 6/15/2012

Services (Gross Receipts/subscriber Receipts)								
177 Service Income				53,175				
177 Sales Without State to Within State						25,355		21,820
189 Programming Services (Gross Receipts/subscriber Receipts)	898,507	170,661						
189 Service Income				58,441				
189 Sales Without State to Within State						21,789	8,957	7,587
3790 Elim Dish DBS Eliminations	(8,092,103)							
					(12,926,310)			
SC Receipts	<u>106,051,421</u>	<u>127,454,788</u>	<u>137,860,306</u>	<u>156,887,976</u>	<u>164,042,814</u>	<u>186,456,660</u>	<u>215,161,466</u>	

(2) SC Sales/Gross Receipts Per Apportionment Work papers
Echo Broadcasting Corporation
 Converted to Gross Receipts Apportionment

Company	Type Sales	12/31/2010
532	Sales Within State to Within State	900,779

EchoStar Corporation

Based on the taxpayer's business activity, they correctly filed utilizing the four factor method. The 4 factor apportion factor of 1.4133% utilized on the 12/10 return was accepted as filed.

000345

3069

SOUTH CAROLINA DEPARTMENT OF REVENUE
COMPUTATION OF THE GROSS RECEIPTS RATIO

TAXPAYER: Dish DBS Corporation fka EchoStar DBS Corporation & AI SCHEDULE: B
FILE #: [REDACTED] AUDITOR: SHARPE
PERIOD: 12/31/06-12/31/11 DATE: 6/15/2012

000346

General Comments: Dish DBS Corporation was inconsistent in the apportionment method they utilized to determine SC Income. Since their predominant SC business is selling access to cable programming to SC residents, they should utilize the gross receipts/sales method to apportion SC Income. Echo Broadcasting Corp's predominate SC business activity is the sale of news feeds to customers domiciled in SC and they should be apportion their SC Income utilizing the gross receipts apportionment factor.

WHEN A COMPANY SHOULD FILE USING THE SALES FACTOR APPORTIONMENT RATIO.

When a company does not deal in tangible personal property, the company should use the single (gross receipts) formula to apportion it's SC income not the factor double weighted sales formula.

Below is an excerpt from the SC Corporate Income Tax Manual:

3. Businesses Not Dealing in Tangible Personal Property — Single Factor (Gross Receipts) Formula

The "gross receipts" formula is used by businesses not dealing in tangible personal property and not using a special formula for particular industries. This formula is typically used by financial and service businesses, including businesses that install and repair tangible personal property and contractors. The gross receipts formula provides that the taxpayer apportions its remaining net income using a fraction in which the numerator is gross receipts from within this State during the taxable year and the denominator is total gross receipts from everywhere during the taxable year.

Below is an excerpt from the SC1120 Instructions:

SCHEDULE H-2 - GROSS RECEIPTS

If the principal profits or income of a taxpayer, other than a public service corporation and a utility and electric cooperative are derived from sources other than manufacturing, producing, collecting, buying, assembling, processing or selling, distributing or dealing in tangible personal property, such taxpayers shall make returns and pay annually an income tax upon a proportion of its remaining net income computed on the basis of the ratio of gross receipts from within this state during the income year to the total gross receipts of such year within and without the state. Examples of corporations subject to a gross receipts method of apportionment are construction contractors, service companies other than public service corporations and corporations primarily engaged in rental real estate activities.

Below is the SC code section indicating which companies use the 3 factor double weighted sales apportionment method:

SECTION 12-6-2250. Conducting business in State; apportionment of income.

(A) A taxpayer whose principal business in this State is (i) manufacturing or a form of collecting, buying, assembling, or processing goods and materials within this State, or (ii) selling, distributing, or dealing in tangible personal property within this State, shall make returns and pay annually an income tax that includes its income apportioned to this State. Its income apportioned to this State is determined by multiplying the net income remaining after allocation pursuant to Sections 12-6-2220 and 12-6-2230 by a fraction, the numerator of which is the property ratio, plus the payroll ratio, plus twice the sales ratio, and the denominator of which is four.

Below is the Code section for the utilizing the Gross Receipts Ratio.

§ 12-6-2250. Conducting business in State; apportionment of income.

3070

SOUTH CAROLINA DEPARTMENT OF REVENUE
COMPUTATION OF THE GROSS RECEIPTS RATIO

TAXPAYER: Dish DBS Corporation fka EchoStar DBS Corporation & AI SCHEDULE: B
FILE #: [REDACTED] AUDITOR: SHARPE
PERIOD: 12/31/06-12/31/11 DATE: 6/15/2012

§ 12-6-2290 -- [C.A. for tax years through 2010.] Apportionment of remaining net income where principal profits or income derived from sources not otherwise described by this chapter.

CAUTION: Section 12-6-2290 below is eff. for tax years through 2010. See also previous version.

If the principal profits or income of a taxpayer are derived from sources other than those described in Section 12-6-2250 or Section 12-6-2310, the taxpayer shall apportion its remaining net income using a fraction in which the numerator is gross receipts from within this State during the taxable year and the denominator is total gross receipts from everywhere during the taxable year. For purposes of this section, items included in gross receipts are as provided in Section 12-6-2295.

(§ 12-6-2290 enacted by L. 1995, Act 76, § 1; amended by L. 2007, Act 110, § 54, eff. 6-21-07 and is applicable for taxable years beginning after 2006; Act 116, § 59.)

For tax years starting on or after 1/1/11, all taxpayer's are required to utilize the sales ratio to apportion their SC income. Refer to SC Revenue Ruling no. 09-15 for details.

000347

3071

000348

South Carolina Department of Revenue
Adjustments To Corporate License Fee

TAXPAYER: Dish DBS Corporation fka EchoStar DBS Corporation & Affiliates
SCHEDULE: C
FILE #: XXXXXXXXXX
AUDITOR: SHARPE Golebiowski
PERIOD: 12/31/06-12/31/11
DATE: 6/15/2012

Dish DBS Corporation

PERIOD ENDED:	12/31/2006	12/31/2007	12/31/2008	12/31/2009	12/31/2010	12/31/2011
TOTAL CAPITAL & PD. IN SURPLUS	2,841,851,218	3,363,463,885	(918,766,668)	(783,519,401)	1,154,614,562	3,190,995,529
SC APPORTIONMENT RATIO (schedule B)	1.3467%	1.3563%	1.4537%	1.4075%	1.4982%	1.6144%
SC PROPORTION	38,270,286	45,618,055	(13,356,534)	(11,028,121)	17,298,319	51,515,320
LICENSE FEE RATE	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%	0.1000%
LICENSE FEE DUE	38,270	45,618	25	25	17,298	51,515
ADDL. LICENSE FEE (12-20-50)	15	15	-	-	15	15
TOTAL LICENSE FEE (\$25 MIN.)	38,285	45,633	25	25	17,313	51,530
LESS: LICENSE FEE PAID	(6,790)	(7,031)	(25)	(25)	(25)	(48,365)
TAX CREDITS						
UNDERPAYMENT (OVERPAYMENT)	31,495	38,602	-	-	17,288	3,165

EchoStar Broadcasting Corporation

PERIOD ENDED:	12/31/2011
TOTAL CAPITAL & PD. IN SURPLUS	1,142,494
SC APPORTIONMENT RATIO (schedule A)	0.4390%
SC PROPORTION	5,015
LICENSE FEE RATE	0.1000%
LICENSE FEE DUE	5
ADDL. LICENSE FEE (12-20-50)	15
TOTAL LICENSE FEE (\$25 MIN.)	25
LESS: LICENSE FEE PAID	(25)
TAX CREDITS	
UNDERPAYMENT (OVERPAYMENT)	-

000349

South Carolina Department of Revenue
Adjustments To Corporate License Fee

TAXPAYER: Dish DBS Corporation fka EchoStar DBS
Corporation & Affiliates

SCHEDULE: C

FILE #: [REDACTED]
PERIOD: 12/31/06-12/31/11

AUDITOR: SHARPE Golebiowski
DATE: 6/15/2012

EchoStar Corporation
PERIOD ENDED:

12/31/2011

TOTAL CAPITAL & PD. IN SURPLUS	3,340,924,667
SC APPORTIONMENT RATIO (schedule A)	1.4133%
SC PROPORTION	47,217,288
LICENSE FEE RATE	0.1000%
LICENSE FEE DUE	47,217
ADDL. LICENSE FEE (12-20-50)	15
TOTAL LICENSE FEE (\$25 MIN.)	47,232
LESS: LICENSE FEE PAID	(47,232)
TAX CREDITS	
UNDERPAYMENT (OVERPAYMENT)	<u>0</u>

Summary of Corp License Fee Adjustments for 12/11 License Fee Year:

Entity	Year	Additional License Fee
Dish DBS Corporation	12/31/2011	3,165
EchoStar Broadcasting Corporation	12/31/2011	-
EchoStar Corporation	12/31/2011	0
Total to Billing Sheet		<u>3,166</u>

3073

South Carolina Department of Revenue
Adjustments To Corporate License Fee

TAXPAYER: Dish DBS Corporation fka EchoStar DBS
Corporation & Affiliates

SCHEDULE: C

FILE # : [REDACTED]

AUDITOR: SHARPE Golebiowski

PERIOD: 12/31/06-12/31/11

DATE: 6/15/2012

EXPLANATION:

LICENSE FEE IS BASED ON CAPITAL STOCK AND "PAID IN SURPLUS" PER SECTION 12-20-50 (PREVIOUSLY 12-19-70) SC CODE OF LAWS. SC PROPORTION OF CAPITAL STOCK AND PAID IN SURPLUS IS DETERMINED IN ACCORDANCE WITH THE RATIOS PRESCRIBED FOR THE PURPOSED OF THE INCOME TAX PER SECTION 12-20-80 (PREVIOUSLY 12-19-80) SC CODE OF LAWS.

000350

3074

Search

Topics
 Population, Economy

Geography
 Maps, Geographic Data

Library
 Infographics, Publications

Data
 Tools, Developers

About the Bureau
 Research, Surveys

Newsroom
 News, Events, Blogs

State & County QuickFacts

Thank you for your feedback! The new delivers the following improvements: Search by zip code, improved table display, browse more data feature, download data, and more.

South Carolina

People QuickFacts	South Carolina	USA
Population, 2014 estimate	4,832,482	318,857,056
Population, 2010 (April 1) estimates base	4,625,401	308,758,105
Population, percent change - April 1, 2010 to July 1, 2014	4.5%	3.3%
Population, 2010	4,625,364	308,745,538
Persons under 5 years, percent, 2014	6.0%	6.2%
Persons under 18 years, percent, 2014	22.4%	23.1%
Persons 65 years and over, percent, 2014	15.8%	14.5%
Female persons, percent, 2014	51.4%	50.8%
White alone, percent, 2014 (a)	68.3%	77.4%
Black or African American alone, percent, 2014 (a)	27.8%	13.2%
American Indian and Alaska Native alone, percent, 2014 (a)	0.5%	1.2%
Asian alone, percent, 2014 (a)	1.5%	5.4%
Native Hawaiian and Other Pacific Islander alone, percent, 2014 (a)	0.1%	0.2%
Two or More Races, percent, 2014	1.7%	2.5%
Hispanic or Latino, percent, 2014 (b)	5.4%	17.4%
White alone, not Hispanic or Latino, percent, 2014	63.9%	62.1%
Living in same house 1 year & over, percent, 2009-2013	84.7%	84.9%
Foreign born persons, percent, 2009-2013	4.8%	12.9%
Language other than English spoken at home, pct age 5+, 2009-2013	6.8%	20.7%
High school graduate or higher, percent of persons age 25+, 2009-2013	84.5%	86.0%
Bachelor's degree or higher, percent of persons age 25+, 2009-2013	25.1%	28.8%
Veterans, 2009-2013	391,660	21,263,779
Mean travel time to work (minutes), workers age 16+, 2009-2013	23.5	25.5
Housing units, 2014	2,188,129	133,957,180
Homeownership rate, 2009-2013	69.1%	64.9%
Housing units in multi-unit structures, percent, 2009-2013	17.9%	26.0%
Median value of owner-occupied housing units, 2009-2013	\$137,400	\$176,700
Households, 2009-2013	1,780,251	115,610,216
Persons per household, 2009-2013	2.55	2.63
Per capita money income in past 12 months (2013 dollars), 2009-2013	\$23,943	\$28,155
Median household income, 2009-2013	\$44,779	\$53,046
Persons below poverty level, percent, 2009-2013	18.1%	15.4%
Business QuickFacts	South Carolina	USA
Private nonfarm establishments, 2013	101,545 ¹	7,488,353
Private nonfarm employment, 2013	1,583,213 ¹	118,266,253
Private nonfarm employment, percent change, 2012-2013	2.2% ¹	2.0%
Nonemployer establishments, 2013	308,746	23,005,620
Total number of firms, 2007	360,397	27,092,908
Black-owned firms, percent, 2007	12.1%	7.1%
American Indian- and Alaska Native-owned firms, percent, 2007	0.5%	0.9%
Asian-owned firms, percent, 2007	1.8%	5.7%



Native Hawaiian and Other Pacific Islander-owned firms, percent, 2007	0.1%	0.1%
Hispanic-owned firms; percent, 2007	1.7%	8.3%
Women-owned firms, percent, 2007	27.6%	28.8%
Manufacturers shipments, 2007 (\$1000)	93,977,455	5,319,456,312
Merchant wholesaler sales, 2007 (\$1000)	40,498,047	4,174,286,516
Retail sales, 2007 (\$1000)	54,298,410	3,917,663,456
Retail sales per capita, 2007	\$12,273	\$12,990
Accommodation and food services sales, 2007 (\$1000)	8,383,463	613,795,732
Building permits, 2014	27,537	1,046,363
Geography QuickFacts	South Carolina	USA
Land area in square miles, 2010	30,060.70	3,531,905.43
Persons per square mile, 2010	153.9	87.4
FIPS Code	45	

1: Includes data not distributed by county.

(a) Includes persons reporting only one race.
 (b) Hispanics may be of any race, so also are included in applicable race categories.

D: Suppressed to avoid disclosure of confidential information
 F: Fewer than 25 firms
 FN: Footnote on this item for this area in place of data
 NA: Not available
 S: Suppressed; does not meet publication standards
 X: Not applicable
 Z: Value greater than zero but less than half unit of measure shown

Source U.S. Census Bureau: State and County QuickFacts. Data derived from Population Estimates, American Community Survey, Census of Population and Housing, State and County Housing Unit Estimates, County Business Patterns, Nonemployer Statistics, Economic Census, Survey of Business Owners, Building Permits
 Last Revised: Monday, 31-Aug-2015 13:01:17 EDT

ABOUT US FIND DATA BUSINESS & INDUSTRY PEOPLE & HOUSEHOLDS SPECIAL TOPICS NEWSROOM

||||

DEPARTMENT DETERMINATION

Taxpayer:

Dish DBS Corporation,
f/k/a Echostar DBS Corp. and Affiliates
9601 South Meridian Blvd.
Englewood, CO 80112

By and Through: John Galloway
Deloitte Tax LLP
Suite 550 South Tryon St.
Charlotte, NC 28202

Periods Involved:

Income Tax periods ending 2004 through 2010; License Fee periods ending 2006 through 2011.

Matter in Dispute:

Is the Taxpayer entitled to source its income related to the sale of television broadcast subscriptions in South Carolina to another state?

Amounts in Dispute:

	TAX	INTEREST*	PENALTY*	TOTALS
Income Tax	\$544,286.00	\$399,496.00	\$276,307.00	\$1,220,089.00
License Fee	90,551.00	32,196.00	21,846.00	144,593.00
TOTALS	\$634,837.00	\$431,692.00	\$298,153.00	\$1,364,682.00

*Interest and Penalty calculated through May 31, 2014 and will continue to accrue until this matter is resolved.

Determination:

The Taxpayer is not entitled to source its income related to the sale of television broadcast subscriptions in South Carolina to another state.

Relevant Facts:

1. Dish DBS Corporation (hereinafter "Dish Corp" or "Taxpayer") is headquartered in Englewood, Colorado, and provides access to digital television entertainment to South Carolina customers. It operates throughout the United States.



2. Dish Corp grants its subscribers access to hundreds of television programming channels and other audio/visual options that are transmitted nationwide to subscriber's homes or businesses via high-powered satellites. Subscribers pay a monthly fee for access to basic channels and can also purchase premium channels and pay-per-view programs for an additional fee.
3. Each South Carolina subscriber rents a satellite dish, remote controls, and receiver box in order to access Dish Corp's programming from their home.
4. Dish Corp filed its original 2004-2010 income tax returns with little consistency. For some years it filed to reflect an approach which sourced its subscription receipts to the origin of its customers. Other years it utilized a sourcing method based upon a cost of performance to establish the income producing activity, sourcing its revenue to its corporate headquarters. The Taxpayer also oscillated between using the standard four-factor apportionment method and the gross receipts method for the tax years at issue.
5. The Department of Revenue (Department) audited the Taxpayer's returns and in a letter dated June 29, 2012, issued proposed notice of assessment. That notice asserted that the taxpayer should be filing using the gross receipts apportionment method and sourcing its receipts from South Carolina subscribers to this State. It also assessed substantial understatement penalties pursuant to S.C. Code Ann. § 12-54-155 (2014).
6. The Taxpayer timely protested the Department's denial of the refund claim and adjustments on the returns in a letter dated September 26, 2012.

Discussion:

Dish Corp objects to the inclusion of its South Carolina subscription receipts as part of its numerator in the calculation of its state tax liability and contends that only the receipts from equipment rentals should be sourced here. As discussed below, the Taxpayer's assertions are without merit and inconsistent with South Carolina law and jurisprudence.

Because Dish Corp is a media broadcasting company not regularly engaged in the sale of tangible personal property, its apportioned net income is determined pursuant to S.C. Code Ann. § 12-6-2290 (2014). For tax years prior to 2010,¹

[i]f the principal profits or income of a taxpayer are derived from sources other than [manufacturing or

¹In 2007, Section 12-6-2290 was amended by replacing "12-6-2252" for "12-6-2250" and adding the language "For purpose of this section, items included in gross receipts are as provided in Section 12-6-2295". These amendments, however, are effective for tax years after 2010.

dealing in tangible personal property] or [certain industries], the taxpayer shall apportion its remaining net income using a fraction in which the numerator is gross receipts from within this State during the taxable year and the denominator is total gross receipts from everywhere during the taxable year.

Section 12-6-2290 (citations omitted) (emphasis added). It is well settled law that the purpose of the South Carolina allocation and apportionment provisions is to provide for imposition of income tax “upon a base which reasonably represents the proportion of the trade or business carried on within this State.” Hertz Corp. v. S.C. Tax Comm’n, 246 S.C. 92, 142 S.E.2d 445 (1965). Furthermore, a statutory provision must be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. Hay v. S.C. Tax Comm’n, 273 S.C. 269, 255 S.E.2d 837 (1979).

The operative question that remains upon application of Section 12-6-2290’s plain language to the facts of this case is quite simple: are Dish Corp’s subscription receipts from South Carolina customers generated “from within this State?” The Department’s auditor contends the question should be answered in the affirmative. Dish Corp believes that these subscription receipts should be deemed produced in California, based upon its interpretation of Lockwood Greene Engineers, Inc. v. South Carolina Tax Comm’n, 293 S.C. 447, 361 S.E.2d 346 (Ct. App. 1987). The analysis required to reach the appropriate answer to this argument rests squarely upon a determination of what is the “income producing activity” in relation to the generation of the subscription receipts at issue.

I. The Income Producing Activity for Dish Corp Occurs Within This State.

In Lockwood, the Court of Appeals determined that the gross receipts of an engineering firm must be apportioned according to the location where the services were performed rather than to where its customers were located. The court referred to this as the “place of activity” test and held that Lockwood’s income producing activity was the provision of personal engineering services. The court further held that because the engineer rendered the services where he physically worked, then the income derived from those services was part of the receipts of the state in which the engineer was located – meaning, work performed in South Carolina was held to be South Carolina receipts.

The Taxpayer erroneously contends that Lockwood “solidified the ‘place of activity’ test as the operative test to determine the portion of a taxpayer’s income producing activities occurring within South Carolina for the purpose of assigning receipts to the South Carolina apportionment factor.”² This argument, however, completely disregards the clear limitations of the Lockwood Court’s holding:

²Taxpayer’s Letter dated September 26, 2012 at 3.

Lockwood also argues the statute has not been consistently interpreted by the Tax Commission. Lockwood refers to Tax Commission guidelines concerning computation of the gross receipts of finance companies and media broadcasters. We are not persuaded these businesses are comparable to Lockwood. By contrast, the Tax Commission guidelines concerning law firms, accounting firms, entertainment and sports companies, and hospital management companies all focus on whether the services are performed in South Carolina. These situations are analogous and consistent with the situation of Lockwood

Lockwood, 293 S.C. at 450, 361 S.E.2d at 348 (emphasis added). The Lockwood Court's decision was based on the Department's long standing administrative practice of apportioning income for certain taxpayers. For example, income from finance companies is apportioned in South Carolina based on whether the borrower resides in this state. Engineers and architects are taxed here if they perform any services in the state. Law firms and accounting firms are subject to tax based on where they perform the personal services for which they are paid. Restaurant franchise companies that have no activity in this state except the presence of their franchise name from which they derive their income are subject to tax in South Carolina. Based on this language, it is abundantly clear that the Court of Appeals intended to limit its holding to certain types of personal service providers. Lockwood logically stands for the proposition that personal service providers should apportion their South Carolina income based on a "place of activity" approach, as that type of service has a direct causal link to the production of income. Here, however, Dish Corp is not a personal service provider; therefore, Lockwood is wholly inapplicable.

The Taxpayer further argues that it should apportion its income pursuant to S.C. Code Ann. § 12-6-2280 (2014), which is the sales factor for businesses whose principal business is manufacturing or dealing in tangible personal property who are apportioning their income pursuant to the three-factor formula under S.C. Code Ann. § 12-6-2250 (2014). However, as demonstrated above, Dish Corp's principal business is the provision of television programming via satellite and, therefore, must apportion its income pursuant to Section 12-6-2290. Nonetheless, Dish Corp further relies on S.C. Code Ann. § 12-6-2295(A)(5) (2014) which reads "sales are attributable to this State to the extent the income-producing activity is performed within this State." It is this very language that provides the basis for Dish Corp's suggestion that its income should be sourced based on a cost of performance approach. While some jurisdictions, including the Multistate Tax Commission, have enacted statutes or regulations with identical language, those jurisdictions have also included the express language "based on cost of performance" in the sourcing provisions. The South Carolina General Assembly, however, chose not to include such language, meaning Section 12-6-2295(A)(5) does not require that income be

sourced for South Carolina apportionment purposes based on a cost of performance, but rather turns upon a factual analysis of the income producing activity.³

To that end, Dish Corp argues that its activities (a majority of which occur outside the State), including (1) selecting, negotiating, acquiring, and managing broadcast programming; (2) managing and servicing the subscriber network; (3) managing the broadcast infrastructure; and (4) receiving programming content (which is then uplinked to the satellites) are its actions that produce income. However, as noted above, Dish Corp's business is one centered upon broadcasting television programming via satellites into the homes of its customers. All of the specific activities identified by Dish Corp lack any and all intrinsic value without the actual provision of television programming to South Carolina customers. It is vital to note here that each and every one of the activities the Taxpayer attempts to characterize as "income producing" has no direct causal effect upon the generation of income. All of them are inherently indirect activities, or rather, precursors to the only direct activity that creates Dish Corp profit. It is *the final act*, the culmination of those enumerated activities – the delivery of the signal into the homes and onto the television screens of its customers – that produces income for Dish Corp. It does not sell contract negotiations. It does not sell network management services. It does not sell broadcast infrastructure or satellite triangulation. Dish Corp is in the business of selling television broadcast subscriptions to customers, and without the actual delivery of that broadcast signal into South Carolina homes it would not have generated the income at issue here. It is that act alone for which South Carolina customers sign contracts and pay their monthly fees.

South Carolina is not alone in this method of sourcing receipts for taxpayers like Dish Corp. Twenty-three states have adopted the "audience approach" for assigning receipts from programming and broadcasting companies.⁴ Florida, for example, adopted the following language:

³ In fact, in 1995 language about "cost of performance" was removed from the sales factor statute by our legislature, which shows a clear legislative intent that the phrase "income producing activity" was not to be limited in such a fashion.

⁴ See e.g., Alabama - Ala. Admin. Code R. 810-27-1-4.18(h) (2013); Arkansas - Ark. Admin. Code § 006.05.308-26-51-718(d)(2.26-51-718(d)) (2013); Colorado - 1 Colo. Code Regs. § 201-3, Spec. Reg. 5A (2013); Connecticut - Conn. Gen. Stat. § 12-218(l) (2013); Florida - Fla. Admin. Code Ann. R. 12C-1.0155(2)(i) (2013); Georgia - Ga. Comp. R. & Regs. 560-7-7.03(5)(c) 6(vii) (2013); Hawaii - Haw. Code R. § 18-235-38-06.04 (2013); Idaho Admin. Code R. 35.01.01.580(01)(e) (2013); Iowa Admin. Code R. 701-54.7(5)(422) (2013); Maryland - Md. Code Regs. 03.04.03.09 (2013); Michigan - Mich. Comp. Laws Ann. § 208.1305(20) (2013); Montana - Mont. Admin. R. 42.26.1103 (2013); New Hampshire - NH Code R. Rev. 304.09 (2013); New Mexico - NM Code R. § 3.5.19(18) (2013); North Dakota - ND Admin. Code R. 81-03-09-38 (2013); Oregon - Or. Rev. Stat. § 314.684 (2013); Or. Admin. R. 150-314.684(4) (2013); California - 18 CA ADC § 25137-8.1 (2013); Illinois - 35 ILCS 5/305(B7) (2013); Louisiana - La. Rev.

Television and Radio Broadcasting. Gross receipts, including advertising revenues, from broadcasting within and without the state will be attributed to the numerator of the sales factor on the basis of the ratio of the audience within the state to the audience everywhere.

Fla. Admin. Code Ann. R. 12C-1.0155(2)(i) (2013). This approach has been tested in adjudicative proceedings as well, and courts in other jurisdictions have held that audience based sourcing for taxpayers like Dish Corp is the proper method. For example, in Texas an Administrative Law Judge illuminated the income producing activity when he held:

The act Petitioner's customer contracts and pays to receive, and the act that produces the receipts at issue, is the act performed by the receiver (i.e., the set top box) that Petitioner sells or leases to its subscribers. Petitioner's customers contract for the receipt of television programming. Petitioner contracts to provide the programming, and it is the microchips within the receiver that unscramble and decode the satellite's encrypted signal that completes the transaction and produces the programming receipt. It is undisputed that each of the programming receipts scheduled within the audit are receipts Petitioner received from Texas subscribers. The ALJ finds the auditor correctly apportioned the receipts at issue.

Anonymous Taxpayer v. Texas Comptroller of Public Accounts, 2013 WL 3490605 (Tex. Cptr. Pub. Acct.) (May 17, 2013) (emphasis added). The approach the auditor has taken here is identical to the Texas ALJ's rationale. Dish Corp produces income in South Carolina by providing receiver boxes that interpret a broadcast signal for South Carolina customers. To that extent, and in complete consistency with Section 12-6-2290, those gross receipts should be sourced to South Carolina.

II. The Penalties Assessed were Proper.

Civil penalties are applied to every South Carolina tax law which requires a return unless otherwise provided. S.C. Code Ann. § 12-54-43 (2014). Such penalties are considered a tax owed this State. Id. Further, "[i]f any tax is not paid when due, interest is due on the

Stat. Ann. § 47:287.95(K)(2)(c)(i) (2013); New Jersey - Metromedia, Inc. v. Director, Div. of Taxation, 97 N.J. 313, 478 A.2d 742 (1984) (citing N.J. Stat. Ann. § 54:10A-8.(2013)); Ohio - Ohio Admin. Code 5703-29-17(9)(a) (2013); Rhode Island - R.I. Admin. Code § 60-1-194:1 (2013); Washington - Wash. Admin. Code 458-20-241(2013).

unpaid portion from the time the tax was due until paid in its entirety." S.C. Code Ann. § 12-54-25(A) (2014). Section 12-54-155(A)(1) states that "[i]f there is an underpayment attributable to...a substantial understatement of tax for a taxable period...there **must** be added to the tax an amount equal to twenty-five percent of the amount of the underpayment." (Emphasis added.) For purposes of this subsection, "understatement" means the excess of the amount of the tax required to be shown on the return for the taxable period over the amount of the tax imposed which is shown on the return. There is a substantial understatement of tax for a taxable period if the amount of the understatement for the taxable period exceeds the greater of ten percent of the tax required to be shown on the return for the taxable period or five thousand dollars. Id. In the instant matter, the Department applied a substantial understatement penalty for underpayment of taxes owed.

Conclusion:

The gross receipts that Dish Corp generates from the sale of subscriptions are directly produced from activity that occurs within this state. The Taxpayer's attempts to argue its out-of-state activities create the income at issue, based upon its strained interpretation of Lockwood, lack all merit. Subscription receipts should be sourced to South Carolina, and the assessment, including penalties, is upheld.

May 13, 2014

Glenn W. Harrison

Current Academic Position:

C.V. Starr Chair in Risk Management and Insurance, and
Director, Center for the Economic Analysis of Risk (CEAR)
Department of Risk Management and Insurance
J. Mack Robinson College of Business
Georgia State University
Atlanta, GA 30302-4036, U.S.A.



Phone: (407) 489-3088
(253) 830-7636 (private FAX)

GSU e-mail: gharrison@gsu.edu
CEAR: <http://cear.gsu.edu>
Private e-mail: glenn@harrison-rutstrom.com

Birth-Date: March 11, 1955
Citizenship: Australian (U.S. Permanent Resident)
Family: Married, one child

Google Scholar: 13,481 citations H index: 56 i10 index: 157

Education

Bachelor of Economics (Honours), Monash University (Melbourne, Australia); 1976.
Master of Economics, Monash University; 1978.
Master of Arts, UCLA; 1980.
Ph.D. (Economics), UCLA; 1982.

Research Fields

Risk perception and management, Risk and uncertainty, Experimental economics, Behavioral econometrics, Poverty and vulnerability, Behavioral finance

Teaching Fields

Microeconomics, Econometrics, Game Theory, Industrial Organization, Environmental Economics, Law & Economics, International Trade, Development Economics

Doctoral Dissertation

Title: Studies in Economic Theory and Method.
Committee: Robert W. Clower (chair), Larry J. Kimbell, Edward E. Leamer, and Axel Leijonhufvud.



Fellowships, Awards & Prizes

- Foundation for Research in Economics and Education Graduate and Dissertation Fellowships, UCLA; 1978/82.
- Center for the Study of Futures Markets Research Grant; 1981/82.
- ASEAN-Australia Economic Relations Research Project Research Grant; 1983/85.
- Social Sciences and Humanities Research Council of Canada Research Grant, "Research in Applied General Equilibrium Analysis"; 1984/85.
- Social Sciences and Humanities Research Council of Canada Research Grant, "Research in Experimental Economics" (with Michael McKee); 1986/87.
- Academic Development Fund Research Grant, University of Western Ontario, "Applications of Computational Game Theory"; 1987/88.
- U.S. Department of Energy, Waste Education and Research Consortium Research Grant, "Assessing Risk-Costs for Nuclear Waste Transportation" (with Ronald G. Cummings); 1990/91.
- Resources for the Future Research Grant, Washington, DC, "Validating the Contingent Valuation Method with Statistical Bias Functions"; 1993/94.
- Richland County Government, "An Operational Survey of Richland County Government"; 1994/95.
- Center for International Business Education and Research, USC, "The Natural Environment and International Competitiveness" (with Eugene Chewing and Maribeth Collier); 1994/95.
- Westinghouse Savannah River Corporation: "Beneficially Reusing LLRW: The Savannah River Site Stainless Steel Program" (with Maribeth Collier); 1994/95.
- Cooperative Agreement, United States Environmental Protection Agency (Office of Policy, Planning & Evaluation), "Environmental CGE Modeling"; 1996/98.
- Danish Social Science Research Council, "Estimating Risk Attitudes and Discount Rates in Denmark" (with Morten I. Lau); Project #24-02-0124, 2002/05.
- Economic Policy Research Unit, University of Copenhagen, "Characterizing Entrepreneurs in Denmark" (with Morten I. Lau and Lise Vesterlund); 2006.
- National Science Foundation, PI, "Cognition in Natural Environments: Using Simulated Scenarios in Complex Decision Making Experiments," Human and Social Dynamics Program, Directorate for Social, Behavioral, and Economic Sciences (with Stephen M. Fiore, Charles E. Hughes, Elisabet Rutström and Eduardo Salas); 2006-2009.
- National Science Foundation, PI, "Naturally Occurring Noise: Experimental Economics & Stochastic Production Frontier Models," Methodology, Measurement & Statistics Program, Directorate for Social, Behavioral & Economic Sciences (with Richard Hofler and Elisabet Rutström); 2006-2008.
- Danish Social Science Research Council, co-PI, "Intertemporal Choice in Denmark: A Longitudinal Field Experiment" (with Steffen Andersen, Morten I. Lau and Elisabet Rutström); 2009-2011.
- Carlsberg Foundation, co-PI, "Eliciting Social Trust in Denmark: A Field Experiment" (with Steffen Andersen and Morten I. Lau); 2009-2010.
- United States Federal Highway Administration, co-PI, "Behavioral Sciences Approach to testing, Validating and Establishing Best Practices for Alternative Highway Revenue Collection: Experiments on Driving Under Uncertain Congestion Conditions and the Effects on Traffic Networks from Congestion Pricing Initiatives," Cooperative Agreement DTFH61-09-H-00012 (with Essam Radwan, Elisabet Rutström and Ronald Tarr); 2009-2012.
- Danish Social Science Research Council, co-PI, "Revealing Economic Behavior with Register-Based Experiments" (with Steffen Andersen and Morten I. Lau); 2012-2015.

Danish Social Science Research Council, co-PI, "The Behavioral Identification and Preferences of Pathological Gamblers" (with Morten I. Lau and Don Ross); 2012-2015.

Employment Experience

Research Officer, Australian Treasury; 1975 - 1977.
Tutor, Department of Economics, Monash University; 1977 - 1978.
Research Associate, NSF Project "A General Equilibrium Appraisal of Property Tax Incidence" (Director: Larry Kimbell, GSM, UCLA); 1979 - 1981.
Staff Research Associate, UCLA Business Forecasting Project, GSM, UCLA; 1980 - 1982.
Reserve Bank of Australia Senior Fellow in Economic Policy, University of Western Australia; 1982.
Assistant Professor, Department of Economics, University of Western Ontario; 1983 - 1988.
Visiting Lecturer, Department of Economics, University of Canterbury (New Zealand); 1984.
Visiting Assistant Professor, Department of Economics, University of Arizona; 1985.
Visiting Fellow, Institute of Southeast Asian Studies, Singapore; 1985.
Visiting Senior Research Fellow, Department of Economics, University of Melbourne (Australia); 1986.
Visiting Professor, Department of Economics, University of Stockholm; 1988.
Associate Professor, Department of Economics, University of Western Ontario; 1988.
Associate Professor, Department of Economics, University of New Mexico; 1988 - 1990.
Erskine Fellow, Department of Economics, University of Canterbury, Christchurch, New Zealand, 1996.
Dewey H. Johnson Professor of Economics, Department of Economics, Moore School of Business, University of South Carolina; 1990 - 2003.
Senior Research Fellow, Institute for Simulation & Training, University of Central Florida; 2003 - 2005.
Professor of Economics, Department of Economics, College of Business Administration, University of Central Florida; 2003 - 2009.
Richard T. Crotty Orange County Endowed Chair, Department of Economics, College of Business Administration, University of Central Florida; 2008 - 2009.
Professor of Economics (part-time), Durham Business School, Durham University; 2007 - 2010.
Visiting Professor of Economics (part-time), Monash University; January 2011- present.

Miscellaneous Professional Experience

Assistant Editor, *Economic Inquiry*; 1979-1980.
Assistant Editor, *American Economic Review (Papers & Proceedings)*; 1980-1981.
Assistant Editor (Screening), *American Economic Review*; 1981-1982.
Associate Editor, *Journal of Regional Science*; 1989-2000.
Editorial Council, *Journal of Environmental Economics and Management*; 1990-1994, 2001-2011.
Editorial Board, *Journal of Economic Methodology*; 2010-2016.
Associate Editor, *Journal of Environmental Economics and Management*; 1994-1997.
Associate Editor, *Economics Letters*; 2012-present.
Consultant, Omniplan Corporation, "An Economic and Social Assessment of the Central Valley Irrigation Project"; Report prepared for the U.S. Department of the Interior (Water & Power Resources Service); 1979-1980.
Consultant, California Energy Commission, "The Impact of Petroleum Shortfalls on the U.S. and California

Economy"; 1980-1981.

Consultant, Atlantic Richfield Company, "Energy Efficiency, Conservation, and Elasticity Planning Study"; 1980-1981.

Consultant, Los Angeles Department of Water and Power, "Forecasting Energy Demand"; 1981.

Consultant, The Windsor Data Bank Project (University of Windsor, Ontario), "Windsor and Essex County Input-Output Industrial Linkage Study"; 1986-1987.

Consultant, Institute for Research on Public Policy, "Trade in Services and Domestic Regulation"; 1987-1987.

Consultant, Centre for International Economics, "Global Agricultural Trade Policy Study"; 1987-1988.

Consultant, The World Bank (Europe, Middle East and North Africa Department), "Trade Integration in Algeria, Morocco, Tunisia and Turkey"; 1988-1989.

Consultant, The Office of the United States Trade Representative, "Reforming the Common Agricultural Policy of the European Communities: A Quantitative Evaluation of Some Negotiating Options"; 1990-1991.

Consultant, The Office of the United States Trade Representative, "Negotiating Compensation for The Effects of Trade Policy Reform"; 1990 - 1991.

Consultant, The World Bank (Europe, Middle East and North Africa Department), "The Impact of Completion of the Market in the European Communities and Trade Integration on Turkey and the Maghreb Countries"; 1990 - 1992.

Consultant, The World Bank (Europe, Middle East and North Africa Department), "Free Trade Negotiations Between The European Communities and Morocco"; 1992 - 1993.

Consultant, Tactical Warfare Studies Division, Sandia National Laboratories, "U.S. Economic Competitiveness"; 1990.

Consultant, American Petroleum Institute, "Identifying and Measuring Non-Use Values for Natural and Environmental Resources: A Critical Review of the State of the Art"; 1991.

Consultant, Barbara J. Goldsmith and Company, "Valuing Environmental Goods With the Contingent Valuation Method"; 1992.

Consultant, National Commission for Employment Policy (Washington, DC), "Estimating Employment Effects of Regulatory Policy Using Computable General Equilibrium Models"; 1992.

Consultant, Harvard Institute for International Development, "Environmental Policy Reform in Lithuania"; 1993.

Consultant, Government of Morocco (Ministry of Foreign Trade), "Quantitative Evaluation of Trade Reform"; 1992-1993.

Consultant, The World Bank (International Economics Department), "The Impact of the Uruguay Round on Developing Countries"; 1994.

Consultant, The World Bank (International Economics Department), "Quantitative Evaluation of Trade Reform in Tunisia and Turkey"; 1994-1995.

Consultant, The World Bank (International Economics Department), "Impact of Customs Union between Turkey and the European Union"; 1995.

Consultant, The World Bank (International Economics Department), "Trade Policy Options for Brazil"; 2001-2002.

Consultant, The World Bank (International Economics Department), "The Effects of Trade Reform on Poverty In Less Developed Countries"; 2001-2002.

Consultant, Westinghouse Savannah River Company, "Feasibility Study for Transfer of Radioactive Scrap Metal Recycling Technologies in Support of the Beneficial Reuse Program"; 1994-1995.

Consultant, Swedish Treasury Department, "Carbon Taxes in Sweden"; 1995-1996.

Consultant, North-South Center, University of Miami, "Trade Policy Options for Chile," 1995-1996.
 Consultant, Ministry of Business and Industry, Government of Denmark, Co-Director of the *MobiDK Project*; 1996-1999.
 Consultant, United States Environmental Protection Agency, "Carbon Taxes in the United States"; 1996-1998.
 Member, Second Generation Model Advisory Panel, Science Advisory Board, United States Environmental Protection Agency; 2004-2008.
 Testifying Expert; various private counsel; 1997 - present.
 Principal and Director, *Law & Economics Consulting Group, Inc.*, 1998 - 1999.
 President, *Harrison & Rutstrom Consulting, Inc.*, 1992 - present.
 Board of Directors, *American Civil Liberties Union of South Carolina*, 2001 - 2005.
 Secretary, *American Civil Liberties Union of South Carolina*, 2002 - 2003.
 Consultant, *South Carolina Department of Revenue*, 2007 - present.
 Fellow, IZA – Institute for the Study of Labor, Bonn, 2013 - present.
 Santa Claus (elected), Department of Economics Christmas Party, University of Western Ontario, 1986.

Publications

- I. Experimental Economics
- II. International Trade Policy & Public Finance
- III. Resource & Environmental Economics
- IV. Law & Economics
- V. Miscellaneous

I. Experimental Economics

1. "The Informational Role of Futures Markets: Some Experimental Evidence" (with Daniel Friedman and Jon Salmon) in M.E. Streit (ed.), *Futures Markets: Modelling, Managing and Monitoring Futures Trading* (Oxford: Basil Blackwell, 1983).
2. "The Informational Efficiency of Experimental Asset Markets" (with Daniel Friedman and Jon Salmon) *Journal of Political Economy*, 92, June 1984, 349-408.
3. "Monopoly Behavior, Decentralized Regulation, and Contestable Markets: An Experimental Evaluation" (with Michael McKee) *The Rand Journal of Economics*, 16, Spring 1985, 51-69.
4. "Experimental Futures Markets," in B.A. Goss (ed.), *Futures Markets: Their Establishment and Performance* (London: Croom Helm, 1986).
5. "An Experimental Test for Risk Aversion," *Economics Letters*, 21, No.1, 1986, 7-11.
6. "Risk Aversion and Preference Distortion in Deterministic Bargaining Experiments," *Economics Letters*, 22, 1986, 191-196.
7. "Risk Aversion and the Nash Solution in Stochastic Bargaining Experiments," *Economics Letters*,

24, 1987, 321-326.

8. "Experimental Evaluation of the Contestable Markets Hypothesis," in E. E. Bailey (ed.), *Public Regulation: New Perspectives on Institutions and Policies* (Cambridge: MIT Press, 1987).
9. "Coasian Solutions to the Externality Problem in Experimental Markets" (with Elizabeth Hoffman, E. E. Rutström and Matthew Spitzer) *The Economic Journal*, 97, June 1987, 380-404; reprinted in J.D. Hey and G. Loomes (eds.), *Recent Developments in Experimental Economics* (London: Edward Elgar, 1993) and J.F. Shogren (ed.), *Experiments in Environmental Economics* (Aldershot, UK: Ashgate Publishing Limited, 2002).
10. "An Experimental Evaluation of Weakest-Link/Best-Shot Models of Public Goods" (with Jack Hirshleifer) *Journal of Political Economy*, 97, February 1989, 201-225.
11. "Theory and Misbehavior of First-Price Auctions," *American Economic Review*, 79, September 1989, 749-762; reprinted in J.D. Hey and G. Loomes (eds.), *Recent Developments in Experimental Economics* (London: Edward Elgar, 1993).
12. "Experimental Evaluation of Institutions of Monopoly Restraint" (with Michael McKee and E. E. Rutström) in L. Green and J. Kagel (eds.), *Advances in Behavioral Economics* (Norwood: Ablex, 1990).
13. "Search Intensity in Experiments" (with Peter Morgan) *The Economic Journal*, 100, June 1990, 478-486.
14. "Risk Attitudes in First-Price Auction Experiments: A Bayesian Analysis," *The Review of Economics & Statistics*, 72, August 1990, 541-546.
15. "A Double-Auction Experiment", in T. Bergstrom and H.R. Varian (eds.), *Instructor's Manual for Intermediate Microeconomics* (New York: Norton, 1990); this package includes computer software.
16. "Rational Expectations and Experimental Methods," in B.A. Goss (ed.), *Rational Expectations and Efficiency in Futures Markets* (London: Routledge, 1991).
17. "Testing Noncooperative Bargaining Theory in Experiments," (with Kevin A. McCabe) in R.M. Isaac (ed.), *Research in Experimental Economics* (Greenwich: JAI Press, Volume 5, 1992).
18. "Theory and Misbehavior of First-Price Auctions: Reply," *American Economic Review*, 82, December 1992, 1426-1443.
19. "Market Dynamics, Programmed Traders, and Futures Markets: Beginning the Laboratory Search for a Smoking Gun," *The Economic Record*, 68, 1992 (Special Issue on Futures Markets), 46-62.
20. "Convergence to Nonstationary Competitive Equilibria: An Experimental Analysis," (with Douglas D. Davis and Arlington W. Williams) *Journal of Economic Behavior and Organization*, 22, 1993,

305-326.

21. "Expected Utility Theory and The Experimentalists," *Empirical Economics*, 19(2), 1994, 223-253.
22. "Stability and Preference Distortion in Resource Matching: An Experimental Study of the Marriage Problem," (with Kevin A. McCabe) in R.M. Isaac (ed.), *Research in Experimental Economics* (Greenwich: JAI Press, Volume 8, 1996).
23. "Expectations and Fairness in a Simple Bargaining Experiment," (with Kevin McCabe) *International Journal of Game Theory*, 25(3), 1996, 303-327.
24. "Methods in Experimental Economics: A Review," (with Maribeth Collier) *Journal of International and Comparative Economics*, 5, 1997, 321-334.
25. "Doing It Both Ways -- Experimental Practice and Heuristic Context," (with Elisabet Rutström) in *Behavioral and Brain Sciences*, 24(3), June 2001, 413-414.
26. "Sequential Bargaining Games," (with Elisabet Rutström) *Encyclopedia of Cognitive Science* (London: The Nature Publishing Group, 2002).
27. "Estimating Individual Discount Rates in Denmark: A Field Experiment," (with Morten I. Lau and Melonie B. Williams) *American Economic Review*, 92(5), December 2002, 1606-1617.
28. Review of Friedel Bolle and Marco Lehmann-Waffenschmidt (eds.), "Surveys in Experimental Economics: Bargaining, Cooperation and Election Stock Markets" (Heidelberg and New York: Physica-Verlag, 2002); *Journal of Economic Literature*, XLI, December 2003, 1275-1276.
29. "Experimental Methods and the Elicitation of Values," (with Ronald Harstad and Elisabet Rutström) *Experimental Economics*, 7(2), June 2004, 123-140.
30. "Field Experiments," (with John A. List) *Journal of Economic Literature*, 42(4), December 2004, 1013-1059.
31. "Field Experiments in Economics: An Introduction," (with J. Carpenter and J.A. List) in J. Carpenter, G.W. Harrison and J.A. List (eds.), *Field Experiments in Economics* (Greenwich, CT: JAI Press, Research in Experimental Economics, Volume 10, 2005, 1-16).
32. "Field Experiments and Control," in J. Carpenter, G.W. Harrison and J.A. List (eds.), *Field Experiments in Economics* (Greenwich, CT: JAI Press, Research in Experimental Economics, Volume 10, 2005, 17-50).
33. "Eliciting Risk and Time Preferences Using Field Experiments: Some Methodological Issues," (with Morten Igel Lau, E. Elisabet Rutström, and Melonie B. Sullivan) in J. Carpenter, G.W. Harrison and J.A. List (eds.), *Field Experiments in Economics* (Greenwich, CT: JAI Press, Research in Experimental Economics, Volume 10, 2005, 125-218).

34. "Bargaining Behavior, Demographics and Nationality: What Can the Experimental Evidence Show?" (with Anebel Botelho, March A. Hirsch, and E. Elisabet Rutström) in J. Carpenter, G.W. Harrison and J.A. List (eds.), *Field Experiments in Economics* (Greenwich, CT: JAI Press, Research in Experimental Economics, Volume 10, 2005, 337-372).
35. Editor (with J. Carpenter and J.A. List), *Field Experiments in Economics* (Greenwich, CT: JAI Press, Research in Experimental Economics, Volume 10, 2005).
36. "Temporal Stability of Estimates of Risk Aversion," (with Eric Johnson, Melayne McInnes and Elisabet Rutström) *Applied Financial Economics Letters*, 1, 2005, 31-35.
37. "Risk Aversion and Incentive Effects: Comment," (with Eric Johnson, Melayne McInnes and Elisabet Rutström) *American Economic Review*, 95 (3), June 2005, 897-901.
38. "Is the Evidence for Hyperbolic Discounting in Humans Just An Experimental Artefact?" (with Morten Igel Lau) *Behavioral & Brain Sciences*, 28, 2005, 657.
39. "Elicitation Using Multiple Price List Formats," (with Steffen Andersen, Morten Lau and Elisabet Rutström) *Experimental Economics*, 9(4), December 2006, 383-405.
40. "Identifying Altruism in the Laboratory," (with Laurie T. Johnson) in D. Davis and R. Mark Isaac (ed.), *Experiments in Fundraising and Charitable Contributions* (Greenwich, CT: JAI Press, Research in Experimental Economics, Volume 11, 2006).
41. "Valuation Using Multiple Price List Formats," (with Steffen Andersen, Morten Lau and Elisabet Rutström) *Applied Economics*, 39(6), April 2007, 675-682.
42. "Naturally Occurring Preferences and Exogenous Laboratory Experiments: A Case Study of Risk Aversion," (with John A. List and Charles Towe) *Econometrica*, 75(2), March 2007, 433-458.
43. "Estimating Risk Attitudes in Denmark: A Field Experiment," (with Morten Lau and Elisabet Rutström) *Scandinavian Journal of Economics*, 109(2), June 2007, 341-368.
44. "Measurement with Experimental Controls," (with Eric Johnson, Melayne McInnes and Elisabet Rutström) in M. Boumans (ed.), *Measurement in Economics: A Handbook* (San Diego, CA: Elsevier, 2007).
45. "House Money Effects in Public Good Experiments: Comment," *Experimental Economics*, 10(4), December 2007, 429-437.
46. "Experimental Evidence on the Existence of Hypothetical Bias in Value Elicitation Experiments," (with Elisabet Rutström) in C.R. Plott and V.L. Smith (eds.), *Handbook of Experimental Economics Results* (New York: Elsevier Press, 2008).
47. "Lost in State Space: Are Preferences Stable?" (with Steffen Andersen, Morten Lau and Elisabet Rutström) *International Economic Review*, 49(3), August 2008, 1091-1112.

48. "Naturally Occurring Markets and Exogenous Laboratory Experiments: A Case Study of the Winner's Curse," (with John A. List) *The Economic Journal*, 118, April 2008, 822-843.
49. "Voting Games and Computational Complexity," (with Tanga McDaniel) *Oxford Economic Papers*, 50(3), 2008, 546-565.
50. "Risk Aversion in Game Shows" (with Steffen Andersen, Morten Lau and Elisabet Rutström) in J.C. Cox and G.W. Harrison (eds.), *Risk Aversion in Experiments* (Bingley, UK: Emerald, Research in Experimental Economics, Volume 12, 2008).
51. "Risk Aversion in the Laboratory" (with Elisabet Rutström) in J.C. Cox and G.W. Harrison (eds.), *Risk Aversion in Experiments* (Bingley, UK: Emerald, Research in Experimental Economics, Volume 12, 2008).
52. "Risk Aversion in Experiments: An Introduction," (with James Cox) in J.C. Cox and G.W. Harrison (eds.), *Risk Aversion in Experiments* (Bingley, UK: Emerald, Research in Experimental Economics, Volume 12, 2008).
53. "Peter Bohm: Father of Field Experiments," (with Martin Dufwenberg) *Experimental Economics*, 11(3), September 2008, 213-220.
54. "Eliciting Risk and Time Preferences," (with Steffen Andersen, Morten Lau and Elisabet Rutström) *Econometrica*, 76(3), May 2008, 583-618.
55. "Neuroeconomics: A Critical Reconsideration," *Economics & Philosophy*, 24(3), 2008, 303-344.
56. "Neuroeconomics: Rejoinder," *Economics & Philosophy*, 24(3), 2008, 433-444.
57. "Expected Utility And Prospect Theory: One Wedding and a Decent Funeral" (with Elisabet Rutström) *Experimental Economics*, 12(2), June 2009, 133-158.
58. "Risk Attitudes, Randomization to Treatment, and Self-Selection Into Experiments," (with Morten Lau and Elisabet Rutström) *Journal of Economic Behavior and Organization*, 70(3), June 2009, 498-507.
59. "Preference Heterogeneity in Experiments: Comparing the Field and Laboratory," (with Steffen Andersen, Morten Lau and Elisabet Rutström) *Journal of Economic Behavior and Organization*, 73, 2010, 209-224.
60. "Choice Under Uncertainty: Evidence from Ethiopia, India and Uganda," (with Steven J. Humphrey and Arjan Verschoor) *The Economic Journal*, 120, March 2010, 80-104.
61. "The Behavioral Counter-Revolution," *Journal of Economic Behavior and Organization*, 73, 2010, 49-57.

62. "Testing Static Game Theory with Dynamic Experiments: A Case Study of Public Goods" (with Anabela Botelho, Lígia M. Costa Pinto and E. Elisabet Rutström) *Games and Economic Behavior*, 67, 2009, 253-265.
63. "Behavioral Econometrics for Psychologists," (with Steffen Andersen, Morten Lau and Elisabet Rutström) *Journal of Economic Psychology*, 31, 2010, 553-576.
64. "What Do Prediction Markets Predict?" (with John Fountain) *Applied Economics Letters*, 18, 2011, 267-272.
65. "The Methodologies of Neuroeconomics," (with Don Ross) *Journal of Economic Methodology*, 17(2), June 2010, 185-196.
66. "Individual Discount Rates and Smoking: Evidence from a Field Experiment in Denmark," (with Morten Lau and Elisabet Rutström) *Journal of Health Economics*, 29, 2010, 708-717.
67. "The Methodological Promise of Experimental Economics," *Journal of Economic Methodology*, 18(2), June 2011, 183-187.
68. "Are You Risk Averse Over Other People's Money?" (with Sujoy Chakravarty, Ernan Haruvy and Elisabet Rutström) *Southern Economic Journal*, 77(4), 2011, 901-913.
69. "Experimental Methods and the Welfare Evaluation of Policy Lotteries," *European Review of Agricultural Economics*, 38(3), 2011, 335-360.
70. "Randomisation and Its Discontents," *Journal of African Economies*, 20(4), 2011, 626-652.
71. "Remarks on Virtual World and Virtual Reality Experiments," (with Ernan Haruvy and Elisabet Rutström) *Southern Economic Journal*, 78(1), July 2011, 87-94.
72. "Non-Linear Mixed Logit," (with Steffen Andersen, Arne Risa Hole, Morten Lau and Elisabet Rutström) *Theory and Decision*, 73, 2012, 77-96.
73. "Inferring Beliefs as Subjectively Uncertain Probabilities," (with Steffen Andersen, John Fountain, Arne Risa Hole and Elisabet Rutström) *Theory and Decision*, 73, 2012, 161-184.
74. "Latent Process Heterogeneity in Discounting Behavior," (with Maribeth Collier and Elisabet Rutström) *Oxford Economic Papers*, 64, 2012, 375-391.
75. "Preferences Over Social Risk," (with Morten Lau, Elisabet Rutström and Marcela Tarazona-Gómez) *Oxford Economic Papers*, 65(1), January 2013, 25-46.
76. "Inducing Risk Neutral Preferences with Binary Lotteries: A Reconsideration," (with Jimmy Martínez-Correa and J. Todd Swarthout) *Journal of Economic Behavior and Organization*, 94, 2013, 145-159.

77. "Theory, Experimental Design and Econometrics Are Complementary (And So Are Lab and Field Experiments)" (with Morten Lau and Elisabet Rutström) in G. Frechette and A. Schotter (eds.), *Handbook of Experimental Economic Methodology* (New York: Oxford University Press, 2015, 296-338).
78. "Dual Criteria Decisions" (with Steffen Andersen, Morten Lau and Elisabet Rutström) *Journal of Economic Psychology*, 41, April 2014, 101-113.
79. "Discounting Behavior and the Magnitude Effect: Evidence from a Field Experiment in Denmark" (with Steffen Andersen, Morten Lau and Elisabet Rutström) *Economica*, 80, 2013, 670-697.
80. "Estimating Subjective Probabilities" (with Steffen Andersen, John Fountain and Elisabet Rutström) *Journal of Risk & Uncertainty*, 48(3), June 2014, 207-229.
81. "Field Experiments and Methodological Intolerance," *Journal of Economic Methodology*, 20(2), 2013, 103-117.
82. "Real Choices and Hypothetical Choices," in S. Hess and A. Daly (eds.), *Handbook of Choice Modeling* (Northampton, MA: Edward Elgar, 2014).
83. "Choice Modeling and Risk Management," (with Jimmy Martínez-Correa) in S. Hess and A. Daly (eds.), *Handbook of Choice Modeling* (Northampton, MA: Edward Elgar, 2014).
84. "Estimating the Subjective Risks of Driving Simulator Accidents," (with Vinayak Dixit and Elisabet Rutström) *Accident Analysis and Prevention*, 62, 2014, 63-78.
85. "Eliciting Subjective Probabilities with Binary Lotteries," (with Jimmy Martínez-Correa and J. Todd Swarthout) *Journal of Economic Behavior and Organization*, 101, May 2014, 128-140.
86. "Impact Evaluation and Welfare Evaluation," *European Journal of Development Research*, 26, 2014, 39-45.
87. "Subjective Bayesian Beliefs," (with Constantinos Antoniou, Morten I. Lau and Daniel Read) *Journal of Risk & Uncertainty*, 2015, forthcoming.
88. "Risk and Time Preferences of Entrepreneurs: Evidence from a Danish Field Experiment," (with Steffen Andersen, Amalia Di Girolamo and Morten I. Lau) *Theory & Decision*, 77(3), October 2014, 341-357.
89. "Experimental Payment Protocols and the Bipolar Behaviorist," (with J. Todd Swarthout) *Theory & Decision*, 77(3), October 2014, 423-438.
90. "Discounting Behavior: A Reconsideration," (with Steffen Andersen, Morten Lau and Elisabet Rutström) *European Economic Review*, 71, November 2014, 15-33.
91. "Cautionary Notes on the Use of Field Experiments to Address Policy Issues," *Oxford Review of*

Economic Policy, 30(4), Winter 2014, forthcoming.

92. "Subjective Beliefs and the Statistical Forecasts of Financial Risks: the Chief Risk Officer Project," (with Richard D. Phillips) in T.J. Andersen (ed.) *Contemporary Challenges in Risk Management* (New York, Palgrave Macmillan, 2014, forthcoming).

II. International Trade Policy and Public Finance

1. "General Equilibrium Analysis of Regional Fiscal Incidence" (with Larry Kimbell) in H. E. Scarf and J. B. Shoven (eds.), *Applied General Equilibrium Analysis* (New York: Cambridge University Press, 1984).
2. Review of Bert G. Hickman (ed.), "Global International Economic Models (Amsterdam: North-Holland, 1983)," *Journal of Economic Literature*, 22, December 1984, 1645-1647.
3. "Economic Interdependence in the Pacific Basin: A General Equilibrium Approach" (with Larry Kimbell) in J. Piggott and J. Whalley (eds.), *New Developments in Applied General Equilibrium Analysis* (New York: Cambridge University Press, 1985).
4. "A General Equilibrium Analysis of Tariff Reductions," in T. N. Srinivasan and J. Whalley (eds.), *General Equilibrium Trade Policy Modelling* (Cambridge: MIT Press, 1986).
5. "On the Solution of General Equilibrium Models" (with Larry Kimbell), *Economic Modelling*, 3, July 1986, 197-212.
6. "The Effect of Manufacturing Sector Protection in Australia and ASEAN: A General Equilibrium Analysis" (with E. E. Rutström), in C. Findlay and R. Garnaut (eds.), *The Political Economy of Manufacturing Protection: Experiences of ASEAN and Australia* (Sydney: George Allen & Unwin, 1986).
7. "Economic Interdependence Between ASEAN and Australia: A General Equilibrium Approach," *ASEAN-Australia Economic Papers* (Kuala Lumpur & Canberra: ASEAN-Australia Joint Research Project, 1987).
8. "Best Approximate Aggregation of Input-Output Systems" (with Richard Manning), *Journal of the American Statistical Association*, 83, December 1987, 1027-1031.
9. "Costs of Agricultural Trade Wars" (with E.E. Rutström and R. Wigle), in A. Stoeckel, D. Vincent, and S. Cuthbertson (eds.), *Macroeconomic Consequences of Farm Support Policies* (Durham: Duke University Press, 1989).
10. "The Economic Impact of the European Community" (with Thomas F. Rutherford and Ian Wooton), *American Economic Review (Papers & Proceedings)*, 79, May 1989, 288-294.

11. "Trade Wars, Trade Negotiations, and Applied Game Theory" (with E. E. Rütström), *The Economic Journal*, 101, May 1991, 420-435.
12. "An Empirical Database for a General Equilibrium Model of the European Communities" (with Thomas F. Rutherford and Ian Wooton), *Empirical Economics*, 16, 1991, 95-120; reprinted in J. Piggott and J. Whalley (eds.), *Applied General Equilibrium* (Heidelberg: Physica-Verlag, Studies in Empirical Economics, 1991).
13. "The Sensitivity Analysis of Applied General Equilibrium Models: Completely Randomized Factorial Sampling Designs" (with H. D. Vinod), *The Review of Economics & Statistics*, 74, May 1992, 357-362.
14. "How Robust Is Applied General Equilibrium Analysis?" (with Richard Jones, Larry Kimbell and Randall Wigle), *Journal of Policy Modelling*, 15(1), 1993, 99-115.
15. "Piecemeal Trade Reform in the Partially Liberalized Economy of Turkey" (with David Tarr and Thomas Rutherford), *The World Bank Economic Review*, 7, May 1993, 191-217.
16. "An Alternative Welfare Decomposition for Customs Unions" (with Thomas F. Rutherford and Ian Wooton), *Canadian Journal of Economics*, 26(4), November 1993, 961-968.
17. "Liberalizing Agriculture in the European Community" (with Thomas F. Rutherford and Ian Wooton), *Journal of Policy Modeling*, 17, 1995, 223-255.
18. "Quantifying the Outcome of the Uruguay Round" (with David Tarr and Thomas F. Rutherford), *Finance & Development*, 32(4), December 1995, 38-41.
19. "Quantifying the Uruguay Round" (with David Tarr and Thomas F. Rutherford), in W. Martin and L.A. Winters (eds.), *The Uruguay Round and Developing Economies* (New York: Cambridge University Press, 1996).
20. "Increased Competition and Completion of the Market in the European Union: Static and Steady State Effects," *Journal of Economic Integration*, 11(3), September 1996, 332-365.
21. "Quantifying the Uruguay Round" (with David Tarr and Thomas F. Rutherford), *Economic Journal*, 107, September 1997, 1405-1430.
22. "Economic Implications for Turkey of a Customs Union With the European Union" (with Thomas F. Rutherford and David G. Tarr), *European Economic Review*, 41, 1997, 861-870.
23. "Opciones de Política Comercial para Chile: una Evaluación Cuantitativa," (with Thomas F. Rutherford and David G. Tarr), *Cuadernos de Economía*, 34, August 1997, 101-137.

24. "Future Trade between Egypt and the European Union: Potential Trade Gains and Policy Issues" (with Thomas F. Rutherford and David G. Tarr), in S. Fawzy (ed.), *The Partnership Agreement between Egypt and the EU: Potential Impact and Policy Implications* (Giza: Cairo University, 1997).
25. "Using Dynamic General Equilibrium Models for Policy Analysis: Introduction," (with S. Jensen, L. Pedersen and T.F. Rutherford) in G.W. Harrison, S. Jensen, L. Pedersen and T. Rutherford (eds.), *Using Dynamic General Equilibrium Models for Policy Analysis* (Amsterdam: Elsevier; Contributions to Economics Analysis 248, 2000).
26. Editor (with S. Jensen, L. Pedersen and T.F. Rutherford), *Using Dynamic General Equilibrium Models for Policy Analysis* (Amsterdam: Elsevier; Contributions to Economics Analysis 248, 2000).
27. "Croatia's Accession to the World Trade Organization: A Quantitative Evaluation," (with Jasminka Šohinger and Davor Galinec), *Ekonomski Pregled*, 1 (11-12), 2001, 1133-1154.
28. "General Equilibrium Analysis of Croatian Accession to the World Trade Organization," (with Jasminka Šohinger and Davor Galinec), in V. Kandžija, L.D. Bernard, E. Claessens, O. Gabrovec-Mei, J. Kröger and A. Kumar (eds.), *Economic System of European Union and Accession of the Republic of Croatia* (Rijeka, Croatia: Faculty of Economics Rijeka, 2001, 315-329).
29. "Policy Reform Without Tears," (with Jesper Jensen, Morten Lau and Thomas F. Rutherford) in A. Fossati and W. Weigard (eds.), *Policy Evaluation With Computable General Equilibrium Models* (New York: Routledge, 2002).
30. "Trade Policy Options for Chile: The Importance of Market Access," (with Thomas F. Rutherford and David G. Tarr), *World Bank Economic Review*, 16(1), 2002, 49-79.
31. "Trade Liberalization, Poverty and Efficient Equity," (with Thomas F. Rutherford and David G. Tarr), *Journal of Development Economics*, 71, June 2003, 97-128.
32. "Políticas de Comércio Regionais, Multilaterais e Unilaterais do MERCOSUL Para o Crescimento Econômico e a Redução da Pobreza No Brasil," (with Thomas F. Rutherford, David G. Tarr, and Antonio Gurgel), *Pesquisa e Planejamento Econômico*, 33(1), April 2003, 1-60.
33. "Rules of Thumb for Evaluating Preferential Trading Arrangements: Evidence from Computable General Equilibrium Assessments," (with Thomas F. Rutherford and David G. Tarr), *Cuadernos de Economía*, 40 (121), December 2003, 460-468.
34. "Foreign Direct Investment and Transition: Challenges for the Croatian Economy," (with Jasminka Šohinger), *Eastern European Economics*, 42(1), January/February 2004, 56-74.
35. "Trade Policy and Poverty Reduction in Brazil," (with Thomas F. Rutherford, David G. Tarr, and Antonio Gurgel), *World Bank Economic Review*, 18(3), 2004, 289-317.

36. "Chile's Regional Arrangements: The Importance of Market Access and Lowering the Tariff to Six Percent," (with Thomas F. Rutherford and David G. Tarr), in Rómulo Chumacero and Klaus Schmidt-Hebbel (eds.), *General Equilibrium Models for the Chilean Economy* (Santiago: Central Bank of Chile, 2005).
 37. "Welfare Implications for Brazil and the Americas of MERCOSUR Trade Policy Options," (with Thomas F. Rutherford, David G. Tarr, and Antonio Gurgel), in Daniel Lederman and Klaus Schmidt-Hebbel (eds.), *The Future of Trade Liberalization in the Americas* (Santiago: Central Bank of Chile, 2006).
- III. Resource and Environmental Economics**
1. "Competition for California's Water: The Role of Energy" (with Mark N. Christensen and Larry Kimbell), in E.A. Engelbert (ed.), *Competition for California's Water: Alternative Resolutions* (Berkeley: University of California Press, 1982).
 2. "Incorporation of Environmental Values in Policy Assessments: A Critical Appraisal of the Art" (with Stuart Burness, Ronald G. Cummings, and Philip T. Ganderton), in A. Dinar and D. Zilberman (eds.), *The Economics and Management of Water and Drainage in Agriculture* (Boston: Kluwer Academic, 1991).
 3. "Valuing Public Goods With The Contingent Valuation Method: A Critique of Kahneman and Knetsch," *Journal of Environmental Economics and Management*, 23, November 1992, 248-257.
 4. *Identifying and Measuring Nonuse Values for Natural and Environmental Resources: A Critical Review of the State of the Art* (with Ronald G. Cummings), (Washington, DC: American Petroleum Institute, 1993).
 5. "Contingent Valuation" (with Ronald G. Cummings) in R.A. Eblen and Q.R. Eblen (eds.), *The Encyclopedia of the Environment* (Boston: Houghton Mifflin, 1995).
 6. "Environmentally Sensitive Industries and an Emerging Mexico," *North American Journal of Economics and Finance*, 4(1), 1994, 109-126.
 7. "Hypothetical Surveys and Real Economic Commitments" (with Helen Neill, Ronald G. Cummings, Philip T. Ganderton and Thomas McGuckin), *Land Economics*, 70(2), May 1994, 145-154. Reprinted in J.F. Shogren (ed.), *Experiments in Environmental Economics* (Aldershot, UK: Ashgate Publishing Limited, 2002).
 8. "Statistical Bias Functions and Informative Hypothetical Surveys" (with McKinley Blackburn and E. Elisabet Rutström), *American Journal of Agricultural Economics*, 76(5), December 1994, 1084-1088.
 9. "The Measurement of Decomposition of Nonuse Values: A Critical Review" (with Ronald G. Cummings), *Environmental and Resource Economics*, 5, 1995, 225-247.

10. "Homegrown Values and Hypothetical Surveys: is the Dichotomous Choice Approach Incentive Compatible?" (with Ronald G. Cummings and E. Elisabet Rutström), *American Economic Review*, 85, March 1995, 260-266.
11. "Must Contingent Valuation Surveys Cost So Much?" (with J. Clay Lesley), *Journal of Environmental Economics and Management*, 31, 1996, 79-95.
12. "On the Use of the Contingent Valuation Method to Estimate Environmental Costs" (with Maribeth Collier), in P.M.J. Reckers (ed.), *Advances in Accounting* (Greenwich, CT: JAP Press, volume 13, 1995).
13. "Environmental Damage Assessment With Hypothetical Surveys: The Calibration Approach," (with Robert Beekman, Lloyd Brown, Leianne A. Clements, Tanga McDaniel, Sherry Odom, and Melonie Williams), in M. Boman, R. Brännlund and B. Kriström (eds.), *Topics in Environmental Economics* (Amsterdam: Kluwer Academic Press, 1998).
14. "Are Hypothetical Referenda Incentive Compatible?" (with Ronald G. Cummings, Steven Elliott, and James Murphy), *Journal of Political Economy*, 105, June 1997, 609-621.
15. "Carbon Emissions and the Economic Costs of Transport Policy in Sweden" (with Bengt Kriström) in R. Roson and K.A. Small (eds.), *Environment and Transport in Economic Modelling* (Amsterdam: Kluwer Academic Press, 1998).
16. "Carbon Taxes in Sweden" (with Bengt Kriström), Final Report to the Skatteväxlingskommittén of the Swedish Parliament, in Statens Offentliga Utredningar, *Skatter, Miljö och Sysselsättning: Bilagedel* ("Taxes, Environment and Employment: Supplementary") (Stockholm: Finansdepartementet, January 1997, ISBN 91-38-20496-7).
17. "General Equilibrium Effects of Increasing Carbon Taxes in Sweden" (with Bengt Kriström) in R. Brännlund and I. Gren (eds.), *Green Taxes: Theory and Practice* (London: Elgar, 1998).
18. "Burden Sharing, Joint Implementation, and Carbon Coalitions" (with Thomas F. Rutherford), in C. Carraro (ed.), *International Environmental Agreements on Climate Change* (Amsterdam: Kluwer, 1999).
19. "Sharing the Burden of Carbon Abatement in the European Union" (with Christoph Böhringer and Thomas F. Rutherford), in C. Böhringer (ed.), *Empirical Modeling of the Economy and the Environment* (Berlin: Springer, 2002).
20. "Hypothetical Bias and Willingness to Accept" (with Steven Nape, Peter Frykblom, and James C. Lesley), *Economics Letters*, 78(3), March 2003, 423-430.
21. "Multilateral Negotiations Over Climate Change Policy" (with Lígia M. Costa Pinto), *Journal of Policy Modeling*, 25(9), December 2003, 911-930.

JOHN A. SWAIN

University of Arizona, Rogers College of Law
1201 E. Speedway Blvd.
Tucson, Arizona 85721-0176
(520) 621-7673
john.swain@law.arizona.edu

EDUCATION

Yale Law School, J.D., 1984.
Editor, Yale Law and Policy Review.

Dartmouth College, A.B., government, *summa cum laude*, 1978.

ACADEMIC POSITIONS

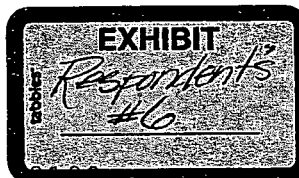
Chester H. Smith Professor of Law
The University of Arizona
James E. Rogers College of Law
(2014 to present)
Courses taught: State and Local Tax; International Tax; Federal Income Tax;
Corporate Tax; Advanced Corporate Tax; Nonprofit Organizations; Estates and
Trusts; Property; and Professional Responsibility.

Professor of Law
The University of Arizona
James E. Rogers College of Law
(2009 to 2014).

L.L.M. Tax Faculty
The University of Alabama School of Law
(2009 to present)
Courses taught: Corporate Tax; International Tax; Advanced Corporate Income
Tax.

Associate Professor of Law
The University of Arizona
James E. Rogers College of Law
(2001-02 to 2008-09).

Associate Professor of Law
The Appalachian School of Law
(Associate professor 2000-01; assistant professor spring 1999, 1999-2000).



002438

Adjunct Professor of Law
Arizona State University
(Fall 1997).

NON-ACADEMIC LEGAL EXPERIENCE

Partner
Streich Lang (now Quarles & Brady)
Phoenix, Arizona
(Partner 1992-1998; Associate 1987-1992).

Associate
Rodey, Dickason, Sloan, Akin & Robb
Albuquerque, New Mexico
(1984-1987).

AWARDS AND HONORS

Named to "The All-Decade State and Local Tax Team," 55 ST. TAX NOTES 127 (Jan. 11, 2010).

Leslie F. and Patricia Bell Faculty Service Award (2010-11).

EXPERT WITNESS AND RELATED EXPERIENCE

Expert Witness, Nevada Department of Revenue, 2013 (Southern California Edison v. Nevada, Case No. 09-OC-00016 1B, 1st Jud. Dist., Carson City, Nevada) (Commerce Clause discrimination remedies).

Consultant to multinational telecommunications company regarding New York telecommunications tax matter (2012-13).

Consultant and Expert Witness, South Carolina Department of Revenue 2011-12 (Duke Energy Corp. v. South Carolina Dept. of Revenue, No. 10-ALJ-17-0270-CC, S.C. Admin. Law Ct.) (income tax apportionment).

Consultant and Expert Witness, Vodafone Americas Holdings 2011-12 (Vodafone Americas Holdings, Inc. v. Farr, Docket No. 07-1860-IV, Tenn. Chancery Court, 20th Jud. Dist., Davidson Cty., Tennessee) (income tax apportionment).

Consultant and Expert Witness, Trans-Alaskan Pipeline Owners, 2010-12 (BP Pipelines (Alaska) Inc. et al. v. State of Alaska Dept. of Revenue, et al. – Superior Court for the State of Alaska, Cause No. 3AN=06-8446 CI) (property tax valuation of Alaskan Pipeline).

Consultant and Expert Witness, State of Minnesota, 2004-06 (MBNA America Bank, N.A. v. Minnesota Commissioner of Revenue, No. 7598-R; and Provident Financial Corporation and Subsidiaries v. Minnesota Commissioner of Revenue, No. C3-03-010083) (income tax nexus cases)

Consultant, State of Mississippi, 2004-05 (WorldCom bankruptcy tax claim).

SCHOLARSHIP

BOOKS

STATE TAXATION (3d ed., Warren, Gorham & Lamont 2014) (co-author, with Walter Hellerstein).

STATE AND LOCAL TAXATION: CASES AND MATERIALS (10th ed., West 2014) (co-author, with Walter Hellerstein, Kirk Stark, & Joan Youngman).

THE STREAMLINED SALES AND USE TAX (co-author, with Walter Hellerstein) (4th ed. 2007/2008).

CHAPTERS

State and Local Tax Aspects of Bankruptcy, in 1A COLLIER ON BANKRUPTCY (15th ed. 1992).

ARTICLES

State Jurisdiction to Tax Nowhere Activity, 33 VA. TAX REV. 209 (2013) (with Walter Hellerstein).

The Questionable Constitutionality of Amazon's Distribution Center Deals, 62 ST. TAX NOTES 667 (2011) (co-author, with Walter Hellerstein).

The Market State Approach to the Attribution of Receipts from Services, 59 ST. TAX NOTES 331 (2011) (co-author, with Walter Hellerstein).

Misalignment of Substantive and Enforcement Tax Jurisdiction in a Mobile Economy: Causes and Strategies for Realignment, 63 NAT'L TAX J. 925 (2010).

Classifying State and Local Taxes: Current Controversies, 54 ST. TAX NOTES 35 (2009) (co-author, with Walter Hellerstein).

Reforming the State Corporate Income Tax: A Market State Approach to the Sourcing of Service Receipts, 83 TUL. L. REV. 285 (2008).

A Comparative Look at International and State and Local Taxation, 50 ARIZ. L. REV. 111 (2008).

Town Fair Tire and the Silliness of the Physical Presence Rule for Use Tax Collection Nexus, 50 ST. TAX NOTES 447 (2008) (co-author, with Walter Hellerstein).

Further Thoughts on the "Subject to Tax" Exception in State Corporate Income Tax Expense Disallowance Statutes, 48 ST. TAX NOTES 597 (2008) (co-author, with Walter Hellerstein).

The Federal Role in State Taxation: A Normative Approach, 60 NAT'L TAX J. 611 (2007) (co-author, with William Fox).

The Streamlined Sales Tax Project and the Local Sourcing Conundrum, 104 J. TAX'N 230 (2006) (co-author, with Walter Hellerstein).

The Political Economy of the Streamlined Sales and Use Tax, 58 NAT'L TAX J. 605 (2005) (co-author, with Walter Hellerstein).

Piercing the Veil to Assert Personal Jurisdiction over Corporate Affiliates: An Empirical Study of the Cannon Doctrine, 84 B. U. L. REV. 446 (2004) (co-author, with Edwin Aguilar).

Third-Party Payments and Bundled Transactions, 37 ST. TAX NOTES 659 (2005) (co-author, with Walter Hellerstein).

The Streamlined Sales and Use Tax Agreement's Sourcing Rules, 34 ST. TAX NOTES 375 (2004) (co-author, with Walter Hellerstein).

State Income Tax Jurisdiction: A Jurisprudential and Policy Perspective, 45 WM. & MARY L. REV. 319 (2003).

State Sales and Use Tax Jurisdiction: An Economic Nexus Standard for the 21st Century, 38 GA. L. REV. 343 (2003).

Cybertaxation and the Commerce Clause: Entity Isolation or Affiliate Nexus?, 75 S. CAL. L. REV. 419 (2002).

The Taxation of Private Interests in Public Property: Toward a Unified Theory of Property Taxation, 2000 UTAH L. REV. 421.

Possessory Interests: A Systematic Valuation Approach, 11 J. PROP. TAX MGMT. 1 (2000) (co-author, with Joseph M. Davis).

National Nexus Program for Resolving Past State Tax Liabilities, 26 TAX'N FOR LAW. 324 (1998) (co-author, with Ronold P. Platner), reprinted in 60 TAX'N FOR ACCT. 206 (1998) and TAX IDEAS ¶ 850 (1998).

OTHER WRITINGS

It's Time to Abandon Retroactive Application of UDITPA Section 18, 73 ST. TAX NOTES 53 (2014).

Checkpoint Catalyst Topic #1007, Sales Factor (2014) (co-author with Melissa A. Oaks).

State Tax Apportionment: The Role of Congress in Developing Apportionment Standards, before the Subcomm. on Admin. and Commercial Law of the House Comm. On the Judiciary, 111th Cong., 2d Sess. (May 6, 2010), reprinted in 56 ST. TAX NOTES 416.

Riverboat Gambling and Use Tax Planning: When to Hold and When to Fold, 53 ST. TAX NOTES 105 (2009).

What Jim Cramer Can Teach us About State and Local Government Finance, 51 ST. TAX NOTES 1049 (2009).

Walter Hellerstein: the Annotation is in the Grooves, 51 ST. TAX NOTES 91 (2009) (tribute).

A Brief History of UDITPA and the Corporate Income Tax Uniformity Movement, 49 ST. TAX NOTES 759 (2008).

The Pumpkin Tax, 46 ST. TAX NOTES 363 (2007).

The Sales Taxation of Customer Loyalty Programs, 45 ST. TAX NOTES 717 (2007).

The Sales and Use Tax Dichotomy and the Streamlining Movement, 43 ST. TAX NOTES 129 (2007).

The Wages of Virtue: Voluntary Registration and Jurisdiction to Tax, 42 ST. TAX NOTES 131 (2006).

Local Sales Tax Sourcing and the Streamlining Movement, 41 ST. TAX NOTES 697 (2006).

What Is a "Sale" for Sales Tax Purposes? (Part 2), 40 ST. TAX NOTES 471 (2006).

What Is a "Sale" for Sales Tax Purposes? (Part 1), 38 ST. TAX NOTES 873 (2005).

The Three Most Important Things to Know about the Streamlined Sales Tax: Amnesty, Amnesty, and Amnesty, 38 ST. TAX NOTES 137 (2005).

Federalists, State Taxation, and the Story of the 17th Amendment, 37 ST. TAX NOTES 813 (2005).

Internet Travel Companies: Taxing the Middleman, 35 ST. TAX NOTES 477 (2005).

Sausage-Making Streamlining-Style: Coupons, Rebates, and other Third-Party Payments, 33 ST. TAX NOTES 794 (2004).

H.R. 3220: A Ringing Endorsement of Factor Nexus, 33 ST. TAX NOTES 61 (2004).

Rethinking Entity Isolation: The Dangers of Pioneering, and of the Leading Case Method, 32 ST. TAX NOTES 197 (2004).

The Fox and the Chicken: 16 Tips for State Tax Administrative Practice, 31 ST. TAX NOTES 57 (2004).

Book review, *Property-Tax Exemption for Charities* (Evelyn Brody, ed.), 41 J. ECON. LIT. 1311 (2003).

State Income Tax Nexus: Making the Case for an Economic Presence Standard in Light of Quill, 9 MULTISTATE TAX REP. 965 (2002).

Reflections on the Possessory Interest Tax, Part 2: Toward a General Theory of Property Taxation, 26 ST. TAX NOTES 103 (2002).

Reflections on the Possessory Interest Tax, Part 1: Toward a General Theory of Possessory Interest Taxation, 24 ST. TAX NOTES 1189 (2002).

Real Property Tax Valuation Appeals: A Primer, 27 ARIZ. ATT'Y, Dec. 1990, at 17.

Municipal Sales and Use Taxes: Highlights of the New Model City Tax Code, 23 ARIZ. B.J., June/July 1987, at 12 (co-author, with Howard J. Kalson).

Efficacy of Illinois Vehicle Safety Inspection Program, YALE LEGIS. SERV. (1982).

PRESENTATIONS (SINCE 2000)

Panelist, *Practical and Policy Implications of the Trend Toward Single Sales Factor Apportionment* (37th Annual Advanced State and Local Tax Institute, Georgetown Law Center, Washington, DC, August 7, 2014).

Paper Presentation, *State Income Taxation of Out-of-State Corporate Partners* (Chapman Law Review Annual Symposium, Orange, CA Mar. 14, 2014).

Keynote Speaker, *Can this End Well? Megatrends in State Taxation* (96th Annual Arizona Tax Conference, Flagstaff, AZ Sept. 26, 2013).

Speaker, *State Taxation of Cloud Computing* (State Bar of California Annual Income Tax Seminar, University of San Diego School of Law, June 28, 2013).

Speaker, *Retroactivity and Equitable Apportionment of Business Income for State Tax Purposes* (Federation of Tax Administrators, Albuquerque, NM, June 11, 2013).

Keynote Panelist, *The Future of Amazon.com and the Implications for Traditional Retailers and E-Commerce Competitors* (Telsey Advisory Group's 5th Annual Spring Consumer Conference, New York, NY, April 8, 2013).

Paper Presentation, *State and Local Taxation of Cloud Computing: A Normative Approach* (National Tax Association Annual Conference, Providence, RI, Nov. 17, 2012).

Speaker, *Equity Challenges to Property Tax Assessments in Theory and Practice* (American Property Tax Counsel, San Francisco, CA, Oct. 13, 2012).

Speaker, *The Federal Role in State Tax Reform: Overview of the State Budget Situation and the Federal Policies that Make State Budgets Worse* (AARP National Policy Council, Santa Fe, NM, June 8, 2011).

Panelist, *Shall We Dance? Coordinating Federal and State Tax Policy* (American Bar Association, Section of Taxation, Midyear Meeting, Boca Raton, FL, Jan. 22, 2011).

Panelist, *Taxing Internet Sales: The Battle Between States and Retailers* (Association of American Law School Annual Meeting, San Francisco, CA, Jan. 6, 2011).

Witness, H.R. Subcomm. on Admin. and Commercial Law, Judiciary, *State Tax Apportionment: The Role of Congress in Developing Apportionment Standards*, 111th Cong. (May 6, 2010).

Speaker, *Corporate Income Tax Apportionment*, (New Mexico Tax Research Institute, 7th Annual Tax Policy Conference, Albuquerque, NM, June 21, 2010).

Discussant, *Checking in on Check the Box*, paper by Heather Field (National Tax Association, 101st Annual Conference on Taxation, Philadelphia, PA, Nov. 21, 2008).

Speaker, *Walter Hellerstein: the Annotation is in the Grooves* (National Tax Association, 101st Annual Conference on Taxation, Philadelphia, PA, Nov. 21, 2008) (ceremony awarding Holland Medal to Walter Hellerstein).

- Speaker, *Recent Federal Income Tax Developments* (Arizona Society of Certified Public Accountants, 24th Annual Federal Tax Institute Tax Conference, Phoenix, AZ, Nov. 7, 2008).
- Paper Presentation, *State Tax Nexus Issues in a Mobile Economy: The Evolving Legal Landscape* (University of Tennessee conference on "Mobility and Tax Policy: Do Yesterday's Taxes Fit Tomorrow's Economy?", Oct. 2-3, 2008.)
- Speaker and Panelist, *The Uniform Division of Income for Tax Purposes Act—Past and Present* (Multistate Tax Commission 41st Annual Meeting, Santa Fe, NM, July 31, 2008).
- Speaker, *Amazon & Ecommerce: Sales Tax Overview & Potential Implications* (Oppenheimer Conference Call, July 1, 2008).
- Speaker and Panelist, *Basic Constitutional Issue in State Taxation* (27th Annual State and Local Tax Conference, National Conference of State Tax Court Judges, Cambridge, Mass., Sept. 28-29, 2007).
- Paper Presentation, *The Federal Role in State Taxation: A Normative Approach* (Annual Spring Symposium, National Tax Assn., Washington, D.C., May 19, 2007) (with William Fox, Ph.D.).
- Moderator and Speaker, *A Cross-Border Colloquy: What State/Local and International Tax Lawyers Can Learn from Each Other* (American Bar Association, Section of Taxation, Midyear Meeting, Hollywood, Fl., Jan. 19, 2007).
- Speaker, *Streamlined Sales Tax: The Fundamentals and the Future* (Annual Sales and Use Tax Symposium, Institute for Professionals in Taxation, Tucson Ariz., Sept. 27, 2006).
- Paper Presentation, *The Political Economy of the Streamlined Sales Tax* (Annual Spring Symposium, National Tax Assn., Washington, D.C., May 20, 2005).
- Speaker, *The Internet and the American Sales Tax* (University of Arizona Rogers College of Law and the Eller College of Management, Tucson, Ariz., November 3, 2004).
- Enrichment Speaker, *Taxing Dotcom Affiliates of Brick and Mortar Retailers: The Personal Jurisdiction Analogue* (University of San Diego School of Law, San Diego, Cal., April 15, 2004).
- Paper Presentation, *An Economic Nexus Standard for the 21st Century* (Tax Council Policy Institute Annual Symposium, Washington, D.C., Feb. 27, 2003).
- Speaker, *Internet Taxation: Where Are We Now?* (Arizona Society of Certified Public Accountants 18th Annual Tax Conference, Phoenix, Ariz., Nov. 7, 2002).

Moderator, *Factor Presence Nexus or H.R. 2526?* (Multistate Tax Commission, Washington, D.C., Oct. 16 2002).

Presentation, *A Practical Approach to State Tax Administrative Proceedings in Arizona*, in *Practical Approach to Federal and State and Local Tax Litigation* (State Bar of Arizona, Phoenix, Ariz., Mar. 7, 2002).

Invited Participant, *Two-Tier Property Taxation* (Lincoln Inst. Land Policy, Cambridge, Mass., Nov. 2000).

Invited Participant, *Tax Exemptions for Charities: The War Within the States* (Urban Institute, Washington, D.C., June 2000).

SELECTED INSTITUTIONAL SERVICE

Member, University of Arizona Committee on Promotion and Tenure, 2014
(university-wide committee)
Chair, Budget Committee, 2013
Chair, Curriculum Committee, 2012-14
Chair, Peer Review Committee, 2011
Co-Chair, Strategic Planning Committee, 2009-10
Chair, Promotion and Tenure Committee, 2009-10
Member, Institutional Review Committee, 2009-2012 (university-wide committee)
Chair, Faculty Enrichment Committee, 2008-09
Member, Peer Review Committee, 2008-09
Chair, Faculty Retreat Committee, 2006-07
Chair, Awards Committee, 2006-07, 2005-06
Member, Admissions Committee, 2006-07, 2005-06
Advisor, Law School Community Service Bd., 2004-05, 2004-03, 2003-02, 2002-01
Member, Future Planning Committee, 2003-04
Member, Faculty Recruitment Committee, 2002-03, 2001-02

ADMITTED TO PRACTICE LAW

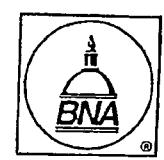
Arizona, 1987 to present.

POLICE
2280

**TAX MANAGEMENT
MULTISTATE TAX
PORTFOLIOS®**

South Carolina Corporate Income Tax

2280



TAX MANAGEMENT MULTISTATE TAX PORTFOLIOS®

South Carolina Corporate Income Tax

by
Rick Handel and Deana West
South Carolina Department of Revenue
and
William C. West, III, Deloitte & Touche LLP

Special Consultants to BNA Tax Management

Rick Handel is the Chief Counsel for Policy for the South Carolina Department of Revenue and an adjunct professor of law with the University of South Carolina School of Law. A graduate of the University of Michigan, Rick received a master's degree from Michigan State University, a law degree *summa cum laude* from Ohio State University, and was a Gerald Wallace Scholar at New York University where he received a Master of Laws in Taxation. A former partner with Nexsen Pruet Jacobs & Pollard and Moore & Van Allen, Rick was included in *The Best Lawyers in America*, received the *Outstanding Professor Award* from the University of South Carolina School of Law, and is included in *Who's Who in American Law*. The S.C. Supreme Court has designated him a "Certified Specialist - Taxation Law." He is the founder of the South Carolina SALT Study Group, an officer of the American Bar Association's SALT Committee, and an active member of its Standards of Tax Practice Committee.

Deana West, CPA, is a revenue law advisor in the department's policy section. A graduate of Converse College, Deana received a bachelor's degree *cum laude* (in accounting) and a master's degree (in taxation) from the University of Georgia. She is a member of the American Institute of Certified Public Accountants and has taught at Midlands Technical College. Deana is the editor and major author for several department publications.

William C West, III, CPA, is a director with Deloitte & Touche LLP in Columbia, South Carolina. He received a bachelor's degree *cum laude* and a master's degree (in taxation) from the University of Georgia. Bill is a member of the South Carolina Association for Certified Public Accountants and the American Institute of Certified Public Accountants. He has specialized in the areas of South Carolina taxes, corporate taxation, manufacturing, inventory and public utility issues.

The authors wish to thank the following former and current department employees: Charles Bruorton, Karen Law, Muriel Leonhardt, Jerilynn VanStory, Graham Reich, Sally Major, Carol McMahon, Rachel Graham, Marshall Smith, Vicki Fleming, John McCormack, Ron Urban, Janet Alewine, John Rogers, John Swearingen, Faye Harmon, Jan Crangle, Susan Shumpert, Elizabeth Carpentier, and Harry Cooper. The authors also thank Liese Ross, Professor William J. Quirk, Cara Mielke, and Lynis Moore. Finally, the authors thank Jack Harper of PriceWaterhouseCoopers for initiating this project and for reviewing portions of the final draft.

NOTE: While two authors are employees of the South Carolina Department of Revenue, the opinions expressed in this Portfolio should not be attributed to the department.

STATE TAX ADVISORY BOARD

Paul H. Frankel, Chairman Emeritus
Morrison & Foerster LLP
New York City

Arthur R. Rosen, Chairman
McDermott Will & Emery
New York, N.Y.

Thomas H. Steele
Morrison & Foerster LLP
San Francisco, California

Russell W. Banigan
Deloitte Tax LLP
New York City

James F. Buresh
Deloitte LLP (Retired)
Los Angeles, California

Bobby L. Burgner
General Electric Co.
Atlanta, Georgia

David E. Cowling
Jones Day
Dallas, Texas

Roy E. Crawford III
McDermott Will & Emery LLP
Palo Alto, California

John J. Cronin
Deloitte Tax LLP (Retired)
Ridgewood, N.J.

Harley T. Duncan
KPMG
Washington, D.C.

Bruce P. Ely
Bradley Arant Boul
Cummings LLP
Birmingham, Alabama

Jeffrey A. Friedman
Sutherland
Washington, D.C.

Gale Garriott
Federation of Tax Administrators
Washington, D.C.

Joanne M. Garvey
Sheppard Mullin Richter & Hampton LLP
San Francisco, California

Richard W. Genetelli
The Genetelli Consulting Group
New York City

Donald M. Griswold
Crowell & Moring
Washington, D.C.

June Summers Haas
Honigman Miller Schwartz & Cohn LLP
Lansing, Michigan

Professor Walter Hellerstein
University of Georgia
Law School
Athens, Georgia

Kendall L. Houghton
Alston & Bird LLP
Washington, D.C.

Joe Huddleston
Multistate Tax Commission
Washington, D.C.

Hollis L. Hyans
Morrison & Foerster LLP
New York, N.Y.

Douglas L. Lindholm
Council On State Taxation
Washington, D.C.

Stephanie Lipinski-Galland
Williams Mullen
Washington, D.C.

Michael Lippman
Alvarez and Marsal
Vienna, Virginia

Lloyd J. Looram
The Looram Consulting Group Inc.
Palm Beach Gardens, Florida

Fred O. Marcus
Horwood, Marcus & Berk, Chtd.
Chicago, Illinois

Bryan Mayster
PricewaterhouseCoopers LLP
Chicago, Illinois

Mark L. Nachbar
Ryan
Chicago, Illinois

Walter Nagel
Crowell & Moring
Washington, D.C.

Joseph Neff
RSM McGladrey
Los Angeles, Calif.

Professor Richard Pomp
University of Connecticut
School of Law
Hartford, Connecticut

Douglas A. Richards
Level 3 Communications, Inc.
Broomfield, Colo.

Jeffrey N. Saviano
Ernst & Young LLP
New York, N.Y.

Scott D. Smith
Baker, Donelson, Bearman,
Caldwell & Berkowitz, P.C.
Nashville, TN

Mark Sommer
Frost Brown Todd LLC
Louisville, Kentucky

Giles Sutton
Grant Thornton LLP
Charlotte, N.C.

Phillip M. Tatarowicz
Morrison & Foerster LLP
Washington, D.C.

Patrick R. Van Tiffin
Honigman Miller Schwartz & Cohn LLP
Lansing, Mich.

Prentiss Willson Jr.
Sutherland
Sacramento, California

Frank Yanover
General Electric Company
Chicago, Illinois

TAX MANAGEMENT BOARD OF EDITORS

Gregory C. McCaffery, CEO and President; Darren McKewen, President, Tax & Specialty; Lisa Fitzpatrick, VP, Group Publisher;
George R. Farrah, CPA, Executive Editor; Karen R. Irby, Esq., Managing Editor;
Christine Boeckel, Esq., Steven Roll, Esq., Assistant Managing Editors;
Renee Bartoll, Esq., Kathleen Caggiano, Esq., Lauren Colandreo, Esq., Michel Daze, Esq., Nancy Emison, Esq.,
Melissa A. Fernley, Esq., Nadine Gjurich, Esq., Ean Hamilton, Esq., Rebecca Helmes, Esq., Michael J. Kerman, Esq., Alexis Kimbrough,
Jessica Lechuga, Esq., Priya D. Nair, Esq., Tonya Sloans, Esq., and Christopher Young, Esq., State Tax Law Editors;
Deborah Swann, Copy Editor; Gretchen Obert, Publications Editor
Beulah Chin, Production Supervisor; Cassandra White, Publication Specialist

Copyright Policy: Authorization to photocopy selected pages for internal or personal use is granted provided that appropriate fees are paid to Copyright Clearance Center (978) 750-8400, <http://www.copyright.com>. For authorization of other uses, contact the TM Request Permission Coordinator at (703) 341-5937, or send a written request via fax (703) 341-1625; or e-mail tm@bna.com. For more information, see <http://www.bna.com/corp/copyright>

© 2014 Tax Management Inc., a subsidiary of The Bureau of National Affairs, Inc.
1801 S Bell St. Arlington, VA 22202-4501
ISSN 1083-2289

3. Interest receipts, service charges, and carrying charges resulting from sales of tangible personal property that are assigned in the same manner as the sales of the tangible personal property to which they relate.^{328.43}

4. The net gain (not the selling price) from sales of assets, including intangibles, other than inventory.^{328.44} This factor does not include gain which is allocated pursuant to S.C. Code Ann. § 12-6-2220.

Planning Point: The sales factor of the target corporation includes the net gain from the sale of assets, other than inventory, and the gross sales price for inventory from the deemed sale if an I.R.C. § 338(h)(10) election is made.

5. Rents from real or stationary personal property are assigned to the sales factor numerator of the state in which the property is located. Rental income from mobile property is assigned among states on the basis of the amount of time during which the property was used in each state. Gross rents, with no deduction for items such as taxes and interest, are used for sales factor purposes.^{328.45}

6. Receipts from intangible personal property that are assigned to the state where the income-producing activity is. If the income-producing activity is performed partly within and partly without South Carolina, sales are attributable to South Carolina to the extent the income-producing activity is performed within South Carolina. For income tax purposes, interest income received from directly owned U.S. Government securities is not included in either the numerator or denominator.^{328.46}

7. Royalty income.^{328.47}

8. Personal service receipts, including management fees that are assigned to the state in which the services are performed. If the services are performed in more than one state, sales are attributable to South Carolina to the extent the income-producing activity is performed in South Carolina. Time actually spent performing the services is usually the measure to those activities.

9. Receipts from the sale of a unitary partnership interest.

10. Miscellaneous receipts, such as receipts from vending machine sales to employees, receipts from

sales of by-products and scrap, and receipts from cafeteria operations for employees.

11. If the taxpayer owns an interest in a partnership that is in a unitary business with another business conducted directly, or indirectly, by the taxpayer, then the partnership's sales are included in the taxpayer's other business's sales factor to the extent of the taxpayer's interest in the partnership.

3. Businesses Not Dealing in Tangible Personal Property – Single Factor (Gross Receipts) Formula

The "gross receipts" formula is used by businesses not dealing in tangible personal property³²⁹ and not using a special formula for particular industries.³³⁰ This formula is typically used by financial and service businesses, including businesses that install and repair tangible personal property and contractors. The gross receipts formula provides that the taxpayer apportions its remaining net income using a fraction in which the numerator is gross receipts from within this state during the taxable year and the denominator is total gross receipts from everywhere during the taxable year.³³¹

The "gross receipts" ratio is most commonly used by service businesses and businesses dealing with intangibles. The proper sourcing of gross receipts was reviewed in *Lockwood Greene Engineers v. South Carolina Tax Comn.*³³² The court held that the purpose of the apportionment statutes is to provide for the imposition of South Carolina income tax "upon a base which reasonably represents the proportion of the trade or business carried on within this state."³³³ The court held that in allocating income of a multistate engineering firm, "gross receipts from within this state" were to be determined according to where the services were performed rather than according to where the customers were located.³³⁴ The court was not persuaded by Lockwood Greene's argument that its holding was inconsistent with the department guidelines concerning computation of the gross receipts of finance companies whose income is sourced to the location of the companies' customers.

In *Geoffrey Inc. v. South Carolina Tax Comn.*³³⁵ the taxpayer earned its income by licensing trademarks and tradenames for a percentage of the sales made by its retail licensees. The South Carolina Supreme Court determined that it was proper for South Carolina to tax its apportioned

^{328.43} S.C. Code Ann. § 12-6-2280(C).

^{328.44} S.C. Dept. of Rev., Commission Decision No. I-D-309 (June 30, 1982).

^{328.45} S.C. Code Ann. § 12-6-2280(C)(1).

^{328.46} S.C. Code Ann. § 12-6-2280(C)(2).

^{328.47} S.C. Dept. of Rev., Commission Decision No. I-D-309 (June 30, 1982).

³²⁹ S.C. Code Ann. § 12-6-2250 providing a three factor (double weighted sales) formula for taxpayers dealing in tangible personal property. See the discussion at 2280.05.D.1, below.

³³⁰ See S.C. Code Ann. § 12-6-2310 and the discussion at 2280.05.D.3, below.

³³¹ S.C. Code Ann. § 12-6-2290, amended by S.B. 91, enacted

June 21, 2007. For tax years beginning or after Jan. 1, 2007, items included in gross receipts are as provided in S.C. Code Ann. § 12-6-2295, added by S.B. 91, enacted June 21, 2007.

³³² *Lockwood Greene Engineers v. South Carolina Tax Comn.*, 361 S.E.2d 346 (S.C. App. 1987).

³³³ *Id.* See S.C. Dept. of Rev., Letter Ruling No. 03-1 (March 10, 2003) (company allowed to apportion royalty income it received from out-of-state affiliates because the income was not generated within the state).

³³⁴ *Id.*

³³⁵ *Geoffrey Inc. v. South Carolina Tax Comn.*, 437 S.E.2d 13 (S.C. 1993), cert. denied 510 U.S. 992 (1993).

share of the royalty income. The court held that intangibles and their income could be taxed at their business situs,³³⁶ and that the real source of Geoffrey's income was not the licensing agreement but South Carolina's customers. Geoffrey's South Carolina apportioned income was determined under the single factor, gross receipts, apportionment formula; *i.e.*, gross receipts from royalty payments from South Carolina sales divided by gross receipts from everywhere.

Planning Point: Considering *Lockwood Greene* and *Geoffrey*, together, it appears that gross receipts are sourced to the state which is most significantly associated with the production of the income; *e.g.*, personal services, where those services are performed; intangibles, where those intangibles are used in a business for the production of income.³³⁷ This conclusion is consistent with the long-standing administrative policy of the department, which was referenced in the *Lockwood Greene* case, that the gross receipts of loans from finance companies are sourced to the location of the companies' customers.

3. Special Apportionment Formulas for Particular Industries

Special apportionment formulas are provided for railroad companies, motor carriers, telephone service companies, pipeline companies, airline companies, and shipping lines.³³⁸

After allocation, the remaining income of these companies must be apportioned as follows:

Railroad Companies

Railroad companies use a fraction, the numerator of which is railway operating revenue from business done within South Carolina during the taxable year, and the denominator is total railway operating revenue from all business done by the taxpayer as shown by its records kept in accordance with the Uniform System of Accounts prescribed by the Interstate Commerce Commission.

Railway operating revenue from business done within South Carolina means railway operating revenue from business wholly within South Carolina, plus the equal mileage proportion within South Carolina of each item of railway operating revenue received from the interstate business of the taxpayer. Equal mileage proportion means the proportion which the distance of movement of property and passengers over lines in South Carolina

bears to the total distance of movement of property and passengers over lines of the taxpayer receiving the revenues. Interstate business means railway operating revenue from the interstate transportation of persons or property into, out of, or through South Carolina.

Motor Carriers

Motor carriers of property and passengers use a fraction, the numerator of which is vehicle miles within South Carolina during the taxable year, and the denominator is total vehicle miles everywhere during the taxable year. The department determined that a company which did not own any trucks, but which leased trucks and hired independent contractors to haul property was a motor carrier which must apportion its income under this method.³³⁹

Telephone Service Companies

Telephone service companies use a fraction, the numerator of which is gross receipts in South Carolina during the taxable year, and the denominator is total gross receipts everywhere. Gross receipts in South Carolina includes gross revenues derived from services rendered wholly within South Carolina, plus that portion of the company's interstate revenues attributable to South Carolina in accordance with the Federal Communications Standard Classification of Accounts.

Pipeline Companies

Pipeline companies use a fraction, the numerator of which is revenue ton miles (one ton of solid property transported one mile), revenue barrel miles (one barrel of liquid property transported one mile), or revenue cubic foot miles (one cubic foot of gaseous property transported one mile) within South Carolina during the taxable year, and the denominator is total revenue ton miles, revenue barrel miles, or revenue cubic foot miles, of the taxpayer everywhere during the taxable year.

Airline Companies

Airline companies use a fraction, the numerator of which is revenue tons loaded and unloaded in South Carolina during the taxable year, and the denominator is revenue tons loaded and unloaded everywhere during the taxable year. A revenue ton is a short ton (2,000 pounds) and is computed by using a standard weight of 190 pounds a passenger (including free baggage) multiplied by the number of passengers loaded and un-

³³⁶ See also *Curry v. McCaless*, 307 U.S. 357, 368 (1939), which states:

[T]here are many circumstances in which more than one state may have jurisdiction to impose a tax and measure it by some or all of the taxpayer's intangibles. Shares of corporate stock may be taxed at the domicile of the shareholder and also at that of the corporation which the taxing state has created and controls; and income may

be taxed both by the state where it is earned and by the state of the recipient's domicile.

³³⁷ See also S.C. Dept. of Rev., Technical Advice Memorandum No. 94-2 (Sept. 20, 1994).

³³⁸ S.C. Code Ann. § 12-6-2310.

³³⁹ S.C. Dept. of Rev., Private Letter Ruling No. 93-3 (June 3, 1993).

UNIFORM DIVISION OF INCOME FOR TAX PURPOSES ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS SIXTY-SIXTH YEAR
AT NEW YORK, NEW YORK
JULY 8-13, 1957

WITH PREFATORY NOTE

APPROVED BY THE AMERICAN BAR ASSOCIATION AT ITS MEETING AT
NEW YORK, NEW YORK, JULY 16, 1957

COMMENTS AMENDED 1966



The Committee which acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Division of Income for Tax Purposes Act was as follows:

George V. Powell, 1111 Dexter Horton Bldg., Seattle 4, Wash., *Chairman*

Guy W. Botts, Barnett National Bank Bldg., Jacksonville, Fla.

Rupert R. Bullivant, Pacific Bldg., Portland, Ore.

Barton H. Kuhns, First National Bank Bldg., Omaha 2, Nebr.

Jo. V. Morgan, District of Columbia Tax Court, 4th & E Sts., N.W., Washington 1, D.C.

O.H. Thormodsgard, University of North Dakota Law School, University, N.D., *Chairman,*
Section C

Copies of all Uniform Acts and other printed matter issued by the Conference may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS ON
UNIFORM STATE LAWS
1155 East Sixtieth Street
Chicago 37, Illinois

UNIFORM DIVISION OF INCOME FOR TAX PURPOSES ACT

PREFATORY NOTE

The Uniform Division of Income for Tax Purposes Act is designed for enactment in those states which levy taxes on or measured by net income.

The need for a uniform method of division of income for tax purposes among the several taxing jurisdictions has been recognized for many years and has long been recommended by the Council of State Governments. There is no other practical means of assuring that a tax-payer is not taxed on more than its net income. At present, the several states have various formulae for determining the amount of income to be taxed, and the differences in the formulae produce inequitable results. The problem has been well analyzed and its historical background outlined in an article appearing in 18 Ohio State Law Journal, page 84.

The Uniform Division of Income for Tax Purposes Act is the result of conferences with the representatives of the Controller's Institute of America, the Council of State Governments and various interested individuals.

UNIFORM DIVISION OF INCOME FOR TAX FOR TAX PURPOSES ACT

Section 1. As used in this Act, unless the context otherwise requires:

(a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

Comment

This definition refers to the taxpayer's trade or business as if he had one business. It is not intended by this language to require a taxpayer having several "businesses" to use the same allocation and apportionment methods for the businesses. The language permits separate treatment of different businesses of a single taxpayer. Section 18 clearly permits separate treatment.

Income from the disposition of property used in a trade or business of the taxpayer is includible within the meaning of business income.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

Comment

The phrase "directed or managed" is not intended to permit both the state where the board of directors meets and the state where the company is managed to claim the commercial domicile. The phrase "directed or managed" is intended as two words serving the same end; not as two separate concepts.

(c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

Comment

This definition is derived from the Model Unemployment Compensation Act which has been adopted in all states.

Compensation paid to "employees" becomes important in the payroll fraction in Section 13. If a corporation is employed to provide personal services, Section 18 may be used to include

compensation paid to corporations in the fraction if exclusion of compensation paid to corporate agents fails to reflect adequately the business activity in the state.

(d) "Financial organization" means any bank, trust company, savings bank, [industrial bank, land bank, safe deposit company], private banker, savings and loan association, credit union, [co-operative bank], investment company, or any type of insurance company.

Comment

This definition and the definition of "public utility" in Subsection (f) is necessary because Section 2 excludes from allocation and apportionment under this Act, income from these two types of business activity. The exclusion is proposed because some states have separate legislation for apportionment and allocation of income of such taxpayers. If not, and the state proposes to change Subsection (2) so as to apply the Act to such taxpayers, this would not necessarily detract from the uniformity objective of this Act.

(e) "Non-business income" means all income other than business income.

(f) "Public utility" means [any business entity which owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, oil, oil products or gas.]

Comment

It is expected that "public utility" will be defined to include all taxpayers subject to the control of the state's regulatory bodies on the theory that separate legislation will provide for the apportionment and allocation of the income of such taxpayers.

See Comment to the definition of "financial organization" for purpose of this definition. "Oil, oil products or gas" is not intended to be so restrictive as to treat differently a public utility, if any, which transmits or produces "gas products." The essential point of the definition is the requirement that the business excluded by this definition and Subsection 2 be a "public utility." Private transmission lines and private production or storage companies are thus not excluded.

(g) "Sales" means all gross receipts of the taxpayer not allocated under Sections 4 through 8 of this Act.

Comment

This all inclusive definition of sales is intended to make apportionable all income not allocated under Sections 4 through 8. As indicated in the Comment to Subsection (1)(a) income from sales of property used in trade or business is included in apportionable income.

(h) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

Section 2. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this Act.

Section 3. For purposes of allocation and apportionment of income under this Act, a taxpayer is taxable in another state if (1) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

Comment

This Section defines, for purposes of Section 2, where a taxpayer is "taxable both within and without this state." To bring this Act into operation a taxpayer must have income from business activity, and he must be taxable in this state, and also in some other state.

Two tests are used by this Section to determine when a taxpayer is "taxable in another state." The first test is a fairly obvious one, the taxpayer is taxable in another state if he is actually subjected to the type of taxes listed in Subparagraph (1).

The second test, in Subparagraph (2) uses a "notional" or "hypothetical" standard rather than an actual one. Thus, if a corporation has its commercial domicile in state X, which has only a sales tax and no tax measured by net income, but that corporation has business activity in state A, which has this apportionment Act, state A must apportion the business income as provided in this Act so that some of it is allocated to state X, even though as a result of the tax system of state X a portion of the business income escapes income taxation. This is desirable in order to treat the business of all states equally, and in order to avoid having this Act as a factor in inducing a

state to have an income tax. If it does not wish to tax income, that is no reason for a state which does wish to tax income to attempt to obtain more than its share of taxable income.

It should be noted that in Subsection (1)(h) the word "state" is defined broadly enough to include a foreign country. This means that "taxable in another state" within Section 3 may mean a foreign country. The apportioning state, however, need consider only whether the foreign country "could have" taxed the income under the constitution of the United States if it had been a state.

While Subparagraph (1) lists several types of taxes which might be actually in effect in another state, the reference in Subparagraph (2) only to a "net income" tax is not intended to be more restricted in the hypothetical tax than the Section is with respect to an actual tax.

Section 4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute non-business income, shall be allocated as provided in sections 5 through 8 of this act.

Comment

This Section is the general Section on "allocating" nonbusiness income to a state just as Section 9 is the general Section on apportionment of business income. Section 2 refers to an allocation and an apportionment of "net income." In "allocating" nonbusiness income to a state, the states concerned with this allocation may desire to allocate the expenses properly attributable to nonbusiness but allocable income in the same way that income is allocated so that these expenses will not be involved in determining net income from business activity where apportionment is used. Section 18 of this Code empowers the state to make this adjustment if it wishes.

Section 5. (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state:

(1) if and to the extent that the property is utilized in this state, or

(2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by

multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

Comment

Rents from mobile tangible property are to be allocated in accordance with Section 5(c). This Subsection apportions the rents by a fraction based on the number of days in the state on the assumption that the rents are generally based on time of use. If the rent itself is calculated on the basis of some factor other than time, Section 18 would permit a state to substitute a fraction based on this substitute factor. Thus, if the rent for a drilling rig is calculated on the basis of number of feet drilled, the "extent of utilization" in the state might also be determined on the basis of a fraction which uses "feet drilled" rather than days in the state.

Section 6. (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if

- (1) the property had a situs in this state at the time of the sale, or
- (2) the taxpayer's commercial domicile is in this state and the taxpayer is not

taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

Section 7. Interest and dividends are allocable to this state if the taxpayer's commercial

domicile is in this state.

Section 8. (a) Patent and copyright royalties are allocable to this state:

(1) if and to the extent that the patent or copyright is utilized by the payer in this state, or

(2) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in this state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

Section 9. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

Section 10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

Comment

The property is to be included in the numerator and denominator is property producing the net income to be apportioned. If net income from property is allocated property under Section 5 through Section 8, such property should be excluded in constructing the fraction.

Section 11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from sub-rentals.

Comment

This section is admittedly arbitrary in using original cost rather than depreciated cost, and in valuing rented property as eight times the annual rental. This approach is justified because the act does not impose a tax, nor prescribe the depreciation allowable in computing the tax, but merely provides a basis for division of the taxable income among the several states. The use of original cost obviates any differences due to varying methods of depreciation, and has the advantage that the basic figure is readily ascertainable from the taxpayer's books. No method of valuing the property would probably be universally acceptable.

In any situation where it is impossible to ascertain original cost, Section 18 may be used to determine a fair value for such property. Section 18 may also be necessary to aid in determining "net annual rental value" of tangible personal property where the actual rent is so related to services that the part attributable to the object is difficult to determine.

Section 18 may also be used to determine a reasonable rental rate for this fraction where the actual rent is zero or nominal such as may be the case where a local government in attempting to induce an industry to come to a community supplies the property at a nominal rental.

Section 12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the [tax administrator] may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

Section 13. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of

which is the total compensation paid everywhere during the tax period.

Comment

Payroll attributable to management or maintenance or otherwise allocable to nonbusiness property should be excluded from the fraction.

Payroll "paid" should be determined by the normal accounting methods of the business so that if the taxpayer "accrues" such matters the payroll should be treated as "paid" for purpose of this Section.

Section 14. Compensation is paid in this state if:

(a) the individual's service is performed entirely within the state; or

(b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

Comment

This section is derived from the Model Unemployment Compensation Act. This is the same figure which will be used by taxpayers for unemployment compensation purposes.

Section 15. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

Comment

The sales to be included in the fraction are only the sales which produce business income. Sales which produce "capital gains" are under Section 6 and are to be allocated rather than

apportioned.

"Total sales" means "total net sales" after discounts and returns.

Section 16. Sales of tangible personal property are in this state if:

- (a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or
- (b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser.

Comment

~~Sales to the United States Government are treated separately because they are not necessarily attributable to a market existing in the state to which the goods are originally shipped.~~

The phrase "delivered or shipped to a purchaser" in this state includes shipments, at the designation of the purchaser, to a person in this state such as designating, while a shipment is en route, the ultimate recipient.

Sales to the United States are treated separately. It is thought that this is justified because sales to the United States are not necessarily attributable to a market existing in the state to which the goods are originally shipped. This different treatment may also be justified because, if the goods are defense or war materials, it may be impossible to determine whether the goods ever came to rest in the state due to use of coded delivery instructions.

The Section does not specify how sales from a subsidiary in the state to an out-of-state parent, such as a marketing corporation who thereupon redirects the goods back into the state, should be treated. If returns are not consolidated under existing state tax law, it may be necessary to use Section 18 to make a fair representation of the business income in this situation.

Section 17. Sales, other than sales of tangible personal property, are in this state if:

- (a) the income-producing activity is performed in this state; or
- (b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

Section 18. If the allocation and apportionment provisions of this Act do not fairly

represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the [tax administrator] may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (a) separate accounting;
- (b) the exclusion of any one or more of the factors;
- (c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or
- (d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

Comment

It is anticipated that this act will be made a part of the income tax acts of the several states. For that reason, this section does not spell out the procedure to be followed in the event of a disagreement between the taxpayer and the tax administrator. The income tax acts of each state presumably outline the procedure to be followed.

Section 18 is intended as a broad authority, within the principle of apportioning business income fairly among the states which have contact with the income, to the tax administrator to vary the apportionment formula and to vary the system of allocation where the provisions of the Act do not fairly represent the extent of the taxpayer's business activity in the state. The phrases in Section 18(d) do not foreclose the use of one method for some business activity and a different method for a different business activity. Neither does the phrase "method" limit the administrator to substituting factors in the formula. The phrase means any other method of fairly representing the extent of the taxpayer's business activity in the state.

Section 19. This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Section 20. This Act may be cited as the Uniform Division of Income for Tax Purposes Act.

Section 21. [The following acts and parts of acts are hereby repealed:

(a)

(b)

(c)]

Section 22. This Act shall take effect



South Carolina Corporate Income Taxes¹

Rick Handel
Deana West
William West

*South Carolina Department of Revenue
Governor Mark Sanford
Burnet R. Maybank III, Director*

¹The opinions expressed in this paper are the authors' opinions and should not be attributed to the South Carolina Department of Revenue. This paper is revised through June 10, 2005, but does not reflect legislation passed in the 2005 South Carolina legislative session.



Comment: South Carolina is not a “cost of performance state;” *i.e.*, a state where receipts are always sourced to the state where the costs to produce the receipts are incurred. It is also not a “market state;” *i.e.*, a state where receipts are always sourced to the state where the item or service is consumed or the location of the payer.⁶⁷

Apportionable sales are receipts which are not allocated.

The sales factor includes:

1. The selling price from the sale of inventory. The selling price is the gross sales price less returns and allowances. “Returns” are defined as goods returned for credit. “Allowances” are credits from breakage, spoilage, inferior quality, shortages in shipping, and the like.

Sales in South Carolina include sales of goods, merchandise, or property received by a purchaser in South Carolina other than the United States Government. The place where goods are received by the purchaser after all transportation is completed is considered to be the location of the sale. Direct delivery into South Carolina by the taxpayer to a person designated by a purchaser is considered delivery to the purchaser in South Carolina.⁶⁸

Note: It has been the longstanding administrative policy of the Department to allow sales to the United States Government to be included in the denominator. Only payments made directly by the United States Government to a seller pursuant to a contract for the sale of property are treated as sales to the United States Government. Sales made by a subcontractor to a United States Government prime contractor are included in the numerator and denominator even though the United States Government is the ultimate recipient and the work is subject to United States Government approval.

2. Interest receipts, service charges, and carrying charges resulting from sales of tangible personal property are assigned in the same manner as the sales of the tangible personal property to which they relate.
3. The net gain (not the selling price) from sales of assets, including intangibles, other than inventory.⁶⁹

Note: This factor does not include gain which is allocated pursuant to SC Code §12-6-2220.

⁶⁷See the discussion in Section .05. E. 3. of this portfolio regarding sourcing gross receipts.

⁶⁸SC Code §12-6-2280(B).

⁶⁹Commission Decision I.D. 309 (1982).

Comment: The sales factor of the target corporation includes the net gain from the sale of assets, other than inventory, and the gross sales price for inventory from the deemed sale if an Internal Revenue Code §338(h)(10) election is made.

4. Rents from real or stationary personal property are assigned to the sales factor numerator of the state in which the property is located. Rental income from mobile property is assigned among states on the basis of the amount of time during which the property was used in each state. Gross rents, with no deduction for items such as taxes and interest, are used for sales factor purposes.⁷⁰
5. Receipts from intangible personal property are assigned to the state where the income-producing activity is. If the income-producing activity is performed partly within and partly without South Carolina, sales are attributable to South Carolina to the extent the income-producing activity is performed within South Carolina. For income tax purposes, interest income received from directly owned U.S. Government securities is not included in either the numerator or denominator.⁷¹
6. Royalty income.
7. Personal service receipts, including management fees are assigned to the state in which the services are performed. If the services are performed in more than one state, sales are attributable to South Carolina to the extent the income-producing activity is performed in South Carolina. Time actually spent performing the services is usually the measure to those activities.
8. Receipts from the sale of a unitary partnership interest.
9. Miscellaneous receipts like:
 - a. Receipts from vending machine sales to employees;
 - b. Receipts from sales of by-products and scrap; and
 - c. Receipts from cafeteria operations for employees.
10. If the taxpayer owns an interest in a partnership that is in a unitary business with another business conducted directly, or indirectly, by the taxpayer, then the partnership's sales are included in the taxpayer's other business' sales factor to the extent of the taxpayer's interest in the partnership.

⁷⁰SC Code §12-6-2280(C)(1).

⁷¹SC Code §12-6-2280(C)(2).

3. Businesses Not Dealing in Tangible Personal Property — Single Factor (Gross Receipts) Formula

The “gross receipts” formula is used by businesses not dealing in tangible personal property⁷² and not using a special formula for particular industries.⁷³ This formula is typically used by financial and service businesses, including businesses that install and repair tangible personal property and contractors. The gross receipts formula provides that the taxpayer apportions its remaining net income using a fraction in which the numerator is gross receipts from within this State during the taxable year and the denominator is total gross receipts from everywhere during the taxable year.⁷⁴

The “gross receipts” ratio is most commonly used by service businesses and businesses dealing with intangibles. The proper sourcing of gross receipts was reviewed in *Lockwood Greene Engineers v. South Carolina Tax Commission*.⁷⁵ The Court held that the purpose of the apportionment statutes is to provide for the imposition of South Carolina income tax “upon a base which reasonably represents the proportion of the trade or business carried on within this State.” The Court held that in allocating income of a multistate engineering firm, “gross receipts from within this State” were to be determined according to where the services were performed rather than according to where the customers were located. The Court was not persuaded by Lockwood Greene’s argument that its holding was inconsistent with the Department guidelines concerning computation of the gross receipts of finance companies whose income is sourced to the location of the companies’ customers.

In *Geoffrey, Inc. v. South Carolina Tax Commission*,⁷⁶ the taxpayer earned its income by licensing trademarks and tradenames for a percentage of the sales made by its retail licensees. The South Carolina Supreme Court determined that it was proper for South Carolina to tax its apportioned share of the royalty income. The Court held that intangibles and their income could be taxed at their business situs,⁷⁷ and that the real source of Geoffrey’s income was not the

⁷²SC Code §12-6-2250 providing a three factor (double weighted sales) formula for taxpayers dealing in tangible personal property. See the discussion in Section .05 E. 2. of this portfolio.

⁷³See SC Code §12-6-2310 and the discussion in Section .05 E. 4. of this portfolio.

⁷⁴SC Code §12-6-2290.

⁷⁵361 S.E.2d 346 (1987).

⁷⁶437 S.E.2d 13 (S.C. 1993) cert. denied 114 S. Ct. 550 (1993).

⁷⁷See also *Curry v. McCannless*, 307 U.S. 357, 59 S.Ct. 900 (1939), which states:

“[T]here are many circumstances in which more than one state may have jurisdiction to impose a tax and measure it by some or all of the taxpayer’s intangibles. Shares of corporate stock may be taxed at the domicile of the shareholder and also at that of the corporation which the taxing state has created and controls; and income may be taxed both by the state where it is earned and by the state of the recipient’s domicile.” *Curry v. McCannless*, 307 U.S. at 368, 59 S.Ct at 906.

licensing agreement but South Carolina's customers. Geoffrey's South Carolina apportioned income was determined under the single factor, gross receipts, apportionment formula; *i.e.*, gross receipts from royalty payments from South Carolina sales divided by gross receipts from everywhere.

Comment: Considering *Lockwood Greene* and *Geoffrey*, together, it appears that gross receipts are sourced to the state which is most significantly associated with the production of the income; *e.g.*, personal services, where those services are performed; intangibles, where those intangibles are used in a business for the production of income.⁷⁸ This conclusion is consistent with the longstanding administrative policy of the Department, which was referenced in the *Lockwood Greene* case, that the gross receipts of loans from finance companies are sourced to the location of the companies' customers.

4. Special Apportionment Formulas for Particular Industries

Special apportionment formulas are provided for railroad companies, motor carriers, telephone service companies, pipeline companies, airline companies, and shipping lines.⁷⁹

After allocation, the remaining income of these companies must be apportioned as follows:

1. Railroad companies

Railroad companies use a fraction, the numerator of which is railway operating revenue from business done within South Carolina during the taxable year, and the denominator is total railway operating revenue from all business done by the taxpayer as shown by its records kept in accordance with the Uniform System of Accounts prescribed by the Interstate Commerce Commission.

Railway operating revenue from business done within South Carolina means railway operating revenue from business wholly within South Carolina, plus the equal mileage proportion within South Carolina of each item of railway operating revenue received from the interstate business of the taxpayer. Equal mileage proportion means the proportion which the distance of movement of property and passengers over lines in South Carolina bears to the total distance of movement of property and passengers over lines of the taxpayer receiving the revenues. Interstate business means railway operating revenue from the interstate transportation of persons or property into, out of, or through South Carolina.

⁷⁸See also SC Tech. Adv. Memo. #94-2.

⁷⁹SC Code §12-6-2310.

I-D 213 Cont.

Section 65-286 requires as a condition precedent for the reporting of the gain in installments that an election be made in a timely filed return. Clearly, no such election was made in the returns filed in the year of sale and the total gain is thus taxable. Attached are notices of assessment and the same should be paid within the time set forth therein.

AND IT IS SO FOUND AND ORDERED. (April 8, 1976)

I-D-214 RE: INCOME TAX

The taxpayer is incorporated under the laws of another state and is qualified to do business in South Carolina. Its principal office is located in still another state. Its main line of business is the designing of electric power generating stations. In South Carolina most of its business has been with a major South Carolina power company, with which it has contracted for the design and engineering of power generating facilities.

We understand that the taxpayer does not take issue with the use of the gross receipts ratio found in Section 65-279.10 as being the proper method to use in arriving at income which is subject to taxation in South Carolina and which also is the basis for arriving at corporation license taxes. The Division, in its proposed assessment of additional taxes, has included in the numerator of the gross receipts ratio all receipts from South Carolina contracts. The taxpayer contends that only gross receipts for services actually performed by its personnel within the State should be included in the numerator of the ratio. Under this contention it contends that the balance of the receipts from the contract should be excluded from the numerator.

In 1972 the General Assembly amended Section 65-279.10 and substituted the words "from within" for the word "in" in the section. Since then the Commission has consistently held this section to require the total inclusion of South Carolina business contracts in the numerator of the formula where the contract relates to a South Carolina project. We do not therefore agree with the taxpayer that it is proper under South Carolina law to exclude in the numerator amounts in excess of the receipts for services actually performed by personnel within South Carolina.

It is our conclusion therefore that the additional assessment of the Division is proper. (April 15, 1976)

I-D-215 RE: INCOME TAX

The taxpayer is incorporated under the laws of another state and is qualified to do business in South Carolina. It timely filed an income tax return for the tax year ended in 1975 showing business income gains and losses. These items constituted business income. The taxpayer also timely filed a return for the year ended in 1975 showing income from the sale of stock and dividends allocable to the place of the corporation's domicile. On this basis the taxpayer made application pursuant to Section 65-2684 for a refund for the period in question. The laws. Section 65-2684 provides in part:

↑
[Redacted]
[Redacted]

4
ID - 214

"Notwithstanding any other law, whenever it shall appear to any taxpayer that a license fee or tax has been erroneously assessed, collected or otherwise paid over to the Commission, the taxpayer may, within ninety days after the date of receipt of notice of the Commission's assessment, bring an action against the Commission for recovery of the license fee or tax. The provisions of this section shall apply whether or not the license fee or tax in question was paid under protest, but shall only be available where the application provided for here is made in writing to the Commission within a period of three years from the date the license fee or tax was due to have been paid, without regard to extensions of time for payment, or if a later date would result, within one year of payment where an additional license fee or tax is assessed and paid * * *"

It does business in South Carolina. It timely filed an income tax return for the tax year ended in 1975 showing business income gains and losses. These items constituted business income. The taxpayer also timely filed a return for the year ended in 1975 showing income from the sale of stock and dividends allocable to the place of the corporation's domicile. On this basis the taxpayer made application pursuant to Section 65-2684 for a refund for the period in question. The laws. Section 65-2684 provides in part:

"Notwithstanding any other law, whenever it shall appear to any taxpayer that a license fee or tax has been erroneously assessed, collected or otherwise paid over to the Commission, the taxpayer may, within ninety days after the date of receipt of notice of the Commission's assessment, bring an action against the Commission for recovery of the license fee or tax. The provisions of this section shall apply whether or not the license fee or tax in question was paid under protest, but shall only be available where the application provided for here is made in writing to the Commission within a period of three years from the date the license fee or tax was due to have been paid, without regard to extensions of time for payment, or if a later date would result, within one year of payment where an additional license fee or tax is assessed and paid * * *"



INDEX

	PAGE
Statement	1
Pleadings	3
Complaint	3
Amended Answer	7
Final Order	10
Notice of Appeal	21
Stipulation of Facts	22
Exhibits	32
Exhibit A-1 1981 return	32
Exhibit A-2 1982 return	44
Exhibit A-3 1983 return	63
Exhibit B Audit Report	73
Exhibit C-1 1981 Amended Return	81
Exhibit C-2 1982 Amended Return	92
Exhibit C-3 1983 Amended Return	107
Exhibit D-1 Decision of S.C. Tax Commission	111
Exhibit D-2 Transcript of Conference before S.C. Tax Commission	120
Exhibit D-3 Taxpayer's Material at Conference	157
Exhibit D-4 Field Services Material at Conference	167
Exhibit E S.C. Rule of Construction	184
Exceptions	186
Agreement of Counsel and Certificate	189



MINUTES OF MEETING

Wednesday, August 24, 1977

Commissioners Dawson and Plowden; Mr. William T. Phee, Executive Director; Commissioner Finch was out of the State.

A.

See Supporting Data file.

The Commission approved the refund.

B.

INCOME TAX DIVISION

Mr. C. H. Brooks, Director, was present.

1. Proposed Regulation

Mr. Brooks presented to the Commission a proposed Regulation relating to income taxes promulgated under Section 11-7-70 of the 1975 Code of Laws, providing for the apportionment of income under Section 11-7-1190 of the Code.

See Supporting Data file.

The Commission agreed to follow the recommendation of Mr. Brooks, as a Rule of Construction, in lieu of submitting it as a Regulation.

2.

EXHIBIT E

000184

DSH0043



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INCOME TAX DIVISION
SOUTH CAROLINA TAX COMMISSION

A Regulation of the South Carolina Tax Commission Relating to Income Taxes
Promulgated Under Section 12-7-70 of the 1976 Code of Laws Providing For
the Apportionment of Income Under Section 12-7-1190 of the Code.

~~REGULATION~~

A taxpayer whose principal business activity in this State is the rendering of personal services and apportions income under Section 12-7-1190 of the South Carolina Code of Laws of 1976 shall include in the numerator and denominator of the gross receipts ratio the amount charged for services performed within this State. Service activities actually performed without this State shall not be included in the numerator of the gross receipts ratio but shall be included in the denominator.

SOUTH CAROLINA TAX COMMISSION

Robert C. Wasson
Robert C. Wasson, Chairman

Charles N. Plowden
Charles N. Plowden, Commissioner

Rayton R. Finch, Jr., Commissioner

John H. Finch, Jr.

*approved as
a 1/c position
not as Reg. but
as a rule of construction
8/24/77*

DSH0044

000185



Business Free DISH Commercial Promotion Agreement (Promo Code: BUSFD)

Retailer Information: (name) _____ (OE) _____ (phone) _____ (agreement) _____

CUSTOMER: Thank you for choosing DISH Network. This agreement (the "Agreement") sets forth the terms and conditions of the Business Free DISH commercial promotion. Additional terms and conditions of service are contained in the Commercial Customer Agreement which is available to you on our website at <http://dishnetwork.com/commerdat> or by calling DISH Network at 1-800-454-0843 and requesting a copy. BY SIGNING BELOW YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE RECEIVED, READ, UNDERSTAND, AND AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, THE TERMS AND CONDITIONS SET FORTH ON ITS SECOND PAGE, AND THE COMMERCIAL CUSTOMER AGREEMENT, WHICH IS INCORPORATED HEREIN BY REFERENCE, AND THAT THE FOLLOWING TERMS WERE DISCLOSED TO YOU PRIOR TO SALE: 1) you must purchase Private Plus (only available for Private Commercial Locations as defined below), Max View, News & Finance, Entertainment, Kids & Education, DISH CD, Pick Your Plan, The Works, Commercial Sports (only available under this promotion in Payment Option #1 below), Commercial Sports & Golf (only available under this promotion in Payment Option #1 below), Sports Package #1 (only available under this promotion for Public Commercial Locations as defined below), or Sports Package #2 (only available under this promotion for Public Commercial Locations) (collectively, "Eligible Commercial Programming"); as your minimum subscription level at all times; 2) programming payments are non-refundable; 3) if you elect Payment Option #1 below, a prorated cancellation fee of \$240 will apply for termination, deactivation of Eligible Commercial Programming, failure to pay in full for twelve (12) months of the Eligible Commercial Programming you selected, or disconnection of service within 30 days after activation as described below; and 4) if you elect Payment Option #2 below, a prorated cancellation fee of \$240 will apply for early termination, deactivation of Eligible Commercial Programming, or disconnection of service as described below. **IN THE EVENT THAT YOU DID NOT RECEIVE THE SECOND PAGE OF THIS AGREEMENT, DO NOT SIGN THIS AGREEMENT. IF YOU CHANGE YOUR PLACE OF BUSINESS, YOU ARE STILL BOUND TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. WE RESERVE THE RIGHT TO CHANGE PRICES, PACKAGES, AND PROGRAMMING AT ANY TIME, INCLUDING WITHOUT LIMITATION, DURING ANY TERM AGREEMENT PERIOD TO WHICH YOU HAVE AGREED.**

Business Name: _____ Account #: _____
Customer Authorized Representative Signature: _____ Title: _____
Customer Authorized Representative Printed Name: _____ Date: _____
Business Address: _____ City: _____ ST: _____ ZIP: _____
Phone: _____

TERMS AND CONDITIONS

TYPE OF COMMERCIAL LOCATION: (Customer shall initial either "Public Commercial Location" or "Private Commercial Location" but not both.)

Public Commercial Location, Customer/Authorized Representative Initials: _____

By signing this Agreement and initialing Public Commercial Location above, you: (i) represent and warrant that the location in which programming services will be used and viewed under this Agreement is generally accessible to the public and is the type of location that is (a) typically classified within the hospitality industry, (b) typically serves food and/or liquor for immediate consumption, and (c) is typically registered with a Fire Occupancy Certificate (a "Public Commercial Location") and (ii) acknowledge and agree that programming services under this Agreement shall be limited to such location. No satellite master antenna television or private cable system in a commercial or residential multiple dwelling unit (i.e., hotels, hospitals, dormitories, etc.) shall be considered a Public Commercial Location; provided, however, that a place of business located within such multiple dwelling units that otherwise meets the definition of a Public Commercial Location (e.g., a restaurant within a hotel or hospital) may be considered a Public Commercial Location. For example, bars, restaurants, night clubs, casinos, lounges, and shopping malls are typically Public Commercial Locations. Notwithstanding the foregoing, DISH Network reserves the right to determine from time to time, in its sole and absolute discretion for any reason or no reason, whether a location constitutes a Public Commercial Location, or is more appropriately considered another type of location.

Private Commercial Location, Customer/Authorized Representative Initials: _____

By signing this Agreement and initialing Private Commercial Location above, you: (i) represent and warrant that the location in which programming services will be used and viewed under this Agreement may be accessible to the public, and is not classified within the hospitality industry (a "Private Commercial Location") and (ii) acknowledge and agree that programming services under this Agreement shall be limited to such location. For example, retail stores, health clubs, business office reception areas or waiting rooms, and the private offices of attorneys, doctors/dentists, and other business professionals are typically Private Commercial Locations. Notwithstanding the foregoing, DISH Network reserves the right to determine from time to time, in its sole and absolute discretion for any reason or no reason, whether a location constitutes a Private Commercial Location, or is more appropriately considered another type of location.

PAYMENT OPTIONS: (Customer shall initial one and only one payment option below.)

Payment Option #1: Annual Programming Purchase, Customer/Authorized Representative Initials: _____

By initialing above, you are electing this Payment Option #1 and agreeing to pre-pay for the purchase twelve (12) consecutive months of the Eligible Commercial Programming (as defined below) you select within thirty (30) days from the date of initial activation (the "Initial Prepayment Period"). If after initial activation, but before the end of the Initial Prepayment Period, you elect to terminate this Agreement, deactivate Eligible Commercial Programming, or fail to pay in full for twelve (12) months of the Eligible Commercial Programming you selected, or your service is disconnected for any

DSH0001



reason, you agree to pay, and we will automatically charge a cancellation fee equal to \$20 multiplied by the number of months remaining in the Initial Term (as defined below) to your DISH Network account or your Credit Card as defined below, at our option. In the event you purchase the Commercial Sports or the Commercial Sports and Golf Packages, you must elect this Payment Option #1.

Payment Option #2: Term Agreement/Credit Card Auto-Pay, Customer/Authorized Representative Initials: _____

By initialing above, you are electing this Payment Option #2 and agreeing to purchase Eligible Commercial Programming (other than the Commercial Sports and the Commercial Sports and Golf packages) for twelve (12) consecutive months from the date of activation ("Initial Term") and enroll in DISH Network's Credit Card Auto-Pay ("CCA") payment program. If after activation, but before the end of the Initial Term, you elect to terminate this Agreement or deactivate Eligible Commercial Programming, or your service is disconnected for any reason, and all programming and other fees and charges for the entire Initial Term have not been paid in full as of such termination, deactivation, or disconnection, you agree to pay, and we will automatically charge a cancellation fee equal to \$20 multiplied by the number of months remaining in the Initial Term to your DISH Network account or your Credit Card as defined below, at our option.

General. This promotion provides eligible new, first-time commercial DISH Network subscribers with a free DISH Network satellite TV system, subject to the terms and conditions of this Agreement (including without limitation, the receiver and other equipment limitations);

Eligibility. Services and equipment must be ordered, installed, and activated between and including March 1, 2005 and July 31, 2005. This offer is limited to new, first-time commercial DISH Network subscribers who purchase services and equipment under this Agreement for use: (i) in a place of business located in the continental U.S., Alaska, Hawaii, or the U.S. Virgin Islands and (ii) in a location within such place of business that qualifies as a Public Commercial Location or Private Commercial Location as determined in the sole and absolute discretion of DISH Network for any reason or no reason. This offer may not be combined with any other offer. Includes either: (i) one new or remanufactured model 111, 301, 311, 3900, or 4900 receiver or (ii) two remanufactured model 2800 receivers. Installation and additional or different receivers and other equipment are sold separately. Maximum of fifteen (15) total receivers per account. DISH Network shall determine eligibility for participation in its sole and absolute discretion and reserves the right to deny eligibility for any reason or no reason.

Programming. A minimum programming package consisting of one of the Eligible Commercial Programming packages available for your type of commercial location (i.e., Public Commercial Location or Private Commercial Location) is required at all times. In the event you do not purchase Eligible Commercial Programming available for your type of location, your service will be deactivated.

Monthly Fees and Payments. You agree to make a monthly payment to DISH Network by the payment due date for the programming you select and for the following fees as applicable depending on the equipment you select: DISH Network DVR Service Fee: A \$4.98 per month DISH Network DVR service fee will be charged to your account for each model 510 or 921 receiver activated; Additional Outlet Programming Access Fee: A \$4.99 per month additional outlet programming access fee (in each case, an "Any-Receiver Model Additional Outlet Programming Access Fee") will be charged to your account for each receiver activated beyond the first. A separate and independent \$4.99 per month additional outlet programming access fee (in each case, a "Dual Tuner Additional Outlet Programming Access Fee") will be charged to your account for each dual tuner receiver (model 322) activated. For example (and without limitation), in the event that two model 322 receivers are activated under this Agreement (which receivers constitute your only receivers), you will be subject to one \$4.99 per month Any Receiver Model Additional Outlet Programming Access Fee and two \$4.99 per month Dual Tuner Additional Outlet Programming Access Fees. The Dual Tuner Additional Outlet Programming Access Fee will be waived on a monthly basis for each dual tuner receiver that DISH Network confirms has been continuously connected to your same land-based phone line. DISH Network's confirmation process shall be the sole method utilized to determine if your Dual Tuner Additional Outlet Programming Access Fee(s) will be waived. Other fees may apply as set forth in the Commercial Customer Agreement. In the event that you use, or allow others to use, programming provided to you under this Agreement to view: (i) programming authorized under this Agreement for use in a Public Commercial Location in a location other than a Public Commercial Location, or (ii) programming authorized under this Agreement for use in a Private Commercial Location in a location other than a Private Commercial Location, you agree to pay to DISH Network upon demand, and DISH Network will automatically charge to your DISH Network account or your Credit Card as defined below, at our option: (a) the difference between the amount actually received by DISH Network for the type of location authorized under this Agreement and the full Public Commercial Location rate or Private Commercial Location rate as applicable, for such programming (regardless of whether DISH Network has or had any and all required distribution rights for such programming); and (b) the total amount of any admission charges or similar fees imposed for listening to or viewing such programming. In the event that you have, or allow others to have (either directly or indirectly), programming authorized for you under a single DISH Network account that at any time has programming activated for multiple receivers that are not all located in the same Public Commercial Location or Private Commercial Location, as applicable based upon the type of programming authorized for the relevant DISH Network account and connected to the same phone line, then you agree to pay DISH Network upon demand, and DISH Network will automatically charge to your DISH Network account or your Credit Card as defined below, at our option: the difference between the amount actually received by DISH Network for the programming authorized under the single account and the full retail price for such programming had each receiver authorized under the single account been authorized under a separate account.

Collection of Fees/Credit Card Authorization. You hereby authorize DISH Network to charge, and/or place a hold with respect to, any and all cancellation fee(s) and fee(s) for unauthorized receipt of programming owing under this Agreement (collectively, the "Authorized Amounts"), to your credit card or debit card that you initially provided to DISH Network and/or to any other credit card or debit card of yours that you provide to make payments to DISH Network (the "Credit Card"), authorize the issuer of the Credit Card to pay the Authorized Amounts without DISH Network submitting a signed receipt, and agree that this Agreement is to be accepted as such authorization. You authorize DISH Network to continue to attempt to charge, and/or place holds with respect to, the Authorized Amounts, or any portion thereof, to the Credit Card until such amounts are paid in full. You acknowledge and agree that DISH Network shall have no liability whatsoever for any non-sufficient funds, rejected debit, or other charges incurred by you as a result of such attempts to charge, and/or place holds on, the Credit Card. Payment of a cancellation fee shall not relieve you of your obligation to pay all unpaid charges on your account. In the event that you are enrolled or later enroll in DISH Network's Credit Card AutoPay ("CCA") or Electronic Funds Transfer ("EFT") payment programs, you agree that the Authorized Amounts and any and all monthly programming, pay-per-view, and other similar and related charges and other amounts owing under this Agreement or the Commercial Customer Agreement may be charged to the credit card or account provided by you to DISH Network pursuant to such CCA or EFT program.

Contact Information. You may reach DISH Network by e-mail at commercialfeedback@echostar.com, or write us at EchoStar Satellite L.L.C., Attn: Commercial Customer Service Center, 5701 South Santa Fe Drive, Littleton, CO 80120. Please do not send payments to this address.

DSH002

Thank you for choosing DISH Network as your television service provider. DISH Network is happy to answer any questions you may have and to provide you with technical and other customer support. You may contact us 24 hours a day, any day of the year, by any of the following means:

Phone: 1-888-284-7116
Email: livehelp@customersupport.dishnetwork.com
Mail: DISH NETWORK CUSTOMER SERVICE CENTER
P.O. BOX 9033
LITTLETON, CO 80160
Website: www.dishnetwork.com

To view this Residential Customer Agreement (the "Agreement") in Spanish, please visit our website at www.dishnetwork.com or call us at 1-888-284-7116 and we will send you a copy. Para ver este Acuerdo en español por favor visite www.dishnetwork.com o llame al 1-888-284-7116 y le enviaremos una copia. "DISH Network" is a trademark of EchoStar Satellite L.L.C. For purposes of this Agreement and any customer agreement(s) applicable to the promotion(s) pursuant to which you are receiving Services and/or Equipment, "DISH Network," "we" or "us" shall mean EchoStar Satellite L.L.C. or, where applicable under the particular circumstances, third party billing agents, and "you" or "your" refer to you, the DISH Network subscriber.

THIS RESIDENTIAL CUSTOMER AGREEMENT DESCRIBES THE TERMS AND CONDITIONS UNDER WHICH DISH NETWORK WILL PROVIDE ITS SERVICES TO YOU. THIS AGREEMENT IS EFFECTIVE UNTIL CHANGED OR REPLACED, IF YOU ARE AN EXISTING DISH NETWORK CUSTOMER AND DO NOT ACCEPT THESE TERMS AND CONDITIONS, OR ANY SUBSEQUENT CHANGES TO, OR REPLACEMENT OF, THESE TERMS AND CONDITIONS, PLEASE NOTIFY US IMMEDIATELY AND WE WILL AT OUR OPTION CANCEL YOUR SERVICES OR ALLOW YOU TO CONTINUE TO RECEIVE YOUR SERVICES UNDER THE TERMS AND CONDITIONS OF YOUR IMMEDIATELY PRIOR RESIDENTIAL CUSTOMER AGREEMENT. IF YOU ARE A NEW DISH NETWORK CUSTOMER, YOUR ACTIVATION OF A DISH NETWORK ACCOUNT AND RECEIPT OF DISH NETWORK SERVICES SHALL CONSTITUTE YOUR ACCEPTANCE OF THIS AGREEMENT AND ITS TERMS AND CONDITIONS WILL BE LEGALLY BINDING UPON YOU. IF YOU ARE AN EXISTING DISH NETWORK CUSTOMER, WE WILL NOTIFY YOU OF ANY CHANGES TO, OR REPLACEMENT OF, THE TERMS AND CONDITIONS OF THIS AGREEMENT AND YOUR CONTINUED RECEIPT OF DISH NETWORK SERVICES FOLLOWING RECEIPT OF SUCH NOTICE SHALL CONSTITUTE YOUR ACCEPTANCE OF SUCH CHANGED OR REPLACED TERMS AND CONDITIONS AND THEY WILL BE LEGALLY BINDING ON YOU.

1. THE DISH NETWORK SERVICE

A. Services Defined. For purposes of this Agreement, the term "Services" shall mean all video, audio, interactive and other programming services and all other services that are currently available from DISH Network (whether subscription based, pay-per-view based or otherwise) and that we may provide to consumers in the future.

B. Changing Your Programming Selection. Unless otherwise specified in this Agreement or the customer agreement(s), if any, applicable to the promotion(s) pursuant to which you are receiving Services and/or Equipment, you may change your programming selection at any time by notifying us. A fee may apply to such changes ("Transaction Fee"). In addition (and without limitation), you may be charged a monthly fee ("Service Access Fee") if you fail to subscribe to one of the following DISH Network basic programming packages: America's Top 60, America's Top 120, America's Top 180, Great Wall TV Package, DISH Latino, DISH Latino Dos, DISH Latino Mas, America's "Everything" Pak, Latino "Everything" Pak, or any of their successor packages. Some Services are only available if you purchase and maintain a minimum level of programming.

C. Programming Availability. Certain Services transmitted by us, including but not limited to some subscription Services, sporting events and broadcast network Services, may be blocked out in your area of reception. If you circumvent or attempt to circumvent any of these blockouts, you may be subject to legal action. You must be at least 18 years of age, or the applicable age of majority where you reside, in order to receive adult-oriented programming services.

D. Ordering Pay-Per-View. You may order DISH Network special events and pay-per-view Services by using your on-screen Program Guide and remote control unit to select the movies and other events we offer. To receive the full functionality of DISH Network pay-per-view Services, your DISH Network receiver must be connected to a land-based telephone line. You may also order DISH Network special events and pay-per-view Services by calling the following toll free number: 1-877-DISH-PPV (3474-778) and using our automated system or speaking with a live operator at one of our Customer Service Centers. A fee will apply for using our automated system ("Pay-Per-View Automated Fee") or calling one of our Customer Service Centers ("Pay-Per-View Live Operator Fee").

E. Private Home Viewing Only. DISH Network provides Services to you solely for your private home viewing, use and enjoyment. You agree that no Services provided to you will be viewed in a public or in commercial establishments. Services may not be rebroadcast, nor performed, nor may admission be charged for listening to or viewing any Services. If we later determine that you utilized your Equipment (or sold, leased or otherwise gave possession of such equipment to a third party who you knew or reasonably should have known intended to use it) to permit the viewing of Services in a commercial establishment or any other area open to the public, we may disconnect your Services and in addition to all other applicable fees, you agree to pay us the difference between the price actually paid for Services and the full commercial rate for such Services, regardless of whether we have or had the rights to distribute such Services in a commercial establishment.

F. Additional Tuners and Receivers. We may allow you to place additional receivers on your account in our sole discretion. Each additional receiver will be authorized to receive the same Services as your initial receiver. This option is only available if your initial DISH Network

DSH0003

receiver and all additional receiver(s) are located at the same residence and are continuously connected to your same land-based telephone line. Unless otherwise specified in the customer agreement(s), if any, applicable to the promotion(s) pursuant to which you are receiving Services and/or Equipment, DISH Network will charge you a monthly additional outlet programming access fee ("Additional Outlet Programming Access Fee") for each tuner activated on your account beyond the first. If you desire to receive Services at two different residential locations, you must open a separate account for each location. You agree that you will not directly or indirectly use a single account for the purpose of authorizing Services for multiple DISH Network receivers that are not all located in the same residence and connected to your same land-based telephone line. If we later determine that you did, we may disconnect your Services and, in addition to all other applicable fees you agree to pay us the difference between the amounts actually received by us and the full retail price for the Services authorized for each DISH Network receiver on your account.

G. Changes in Services Offered. We reserve the right to add, delete, rearrange and/or change any and all programming, programming packages and other Services that we offer, and our prices and fees related to such programming, programming packages and Services at any time, including without limitation during any term agreement period to which you have agreed under the terms and conditions of any other agreement with DISH Network. If a change affects you, we will provide you notice of such changes and its effective date. In the event that we delete, rearrange or change any programming, programming packages or other Services, you understand and agree that we have no obligation to replace or supplement any programming, programming packages or other Services previously offered that have been deleted, rearranged or otherwise changed. You further understand and agree that you will not be entitled to any refund because of a deletion, rearrangement or change in the contents of any programming, programming packages, or other Services previously offered.

H. Multi-Month Subscriptions. For multi-month subscriptions, you may downgrade your Services only at your time of renewal. You may not downgrade your Services during the term of a multi-month subscription.

2. BILLING POLICIES AND PAYMENTS FOR SERVICES

A. You agree to pay all amounts billed for Services and to pay all taxes, fees and other charges, if any, which are now or may in the future be assessed in connection with any Services you receive from us. Unless you prepay for a multi-month subscription to Services, we will bill you each month in advance for most Services and in arrears for other Services, such as pay-per-view ordered by you or anyone who uses your Equipment, whether with or without your permission, until you cancel your Services. Bills you receive will show the total amount due, the payment due date, payments, credits, purchases and certain other charges to your account.

B. You agree to pay us in full monthly by the payment due date indicated on your bill for your Services and for any other charges due and owing to us, including without limitation any fees named in this Section 2. If you do not pay your bill in full on or before its due date, you agree to pay an administrative fee for late payment ("Late Payment Fee") as described below. Other fees and charges may also be assessed, including without limitation a returned payment fee ("Returned Payment Fee") in the event such non-payment arises from non-sufficient funds. If you request a duplicate billing statement, you will be assessed an additional fee (also referred to as a "Transaction Fee"). You may submit your payment by mail, on our website, through our autopay program, by calling a DISH Network customer service representative or by any other means we may designate. If payment is made by calling a DISH Network customer service representative, a fee will be assessed ("Live Operator Payment Fee") as described below. If partial payments are made, they will be applied first to the oldest outstanding bill. We do not assume the risk of undelivered mail; if you send checks or money orders marked with a designation such as "payment in full" we can accept them without waiving any of our rights, including without limitation our rights to collect any other amounts owed by you, notwithstanding your characterization of such payment. DISH Network does not extend credit to our customers, and the Late Payment Fee is not interest, a credit service charge, or a finance charge. You understand and agree that in the case of late payment or nonpayment for any Services ordered by you or for any of the charges stated below, we may report such late payment or nonpayment to credit reporting agencies. If you do not pay your bill in full by its due date, or if you at any time otherwise fail, neglect or refuse to make timely payment for your Services, we have the right to disconnect your Services at any time thereafter, in our sole discretion, and in such event we shall be wholly relieved from any and all of our duties and obligations under this Agreement. If your Services are disconnected for nonpayment or for any other reason, DISH Network may require you to pay, and you agree to pay, all past due charges, a fee for reconnection ("Restart Fee"), a deposit equal to a minimum of two month's service charges and all outstanding balances accrued through the date of such disconnection, before we reconnect your Services. Unless required by applicable law, deposits will not be held segregated from other funds and shall not earn or accrue interest. Promotional pricing is valid only at time of installation. Additional charges may apply for you to upgrade your Services or Equipment after installation or for non-standard installations.

C. If you paid for an annual or other multi-month subscription to any Services and your account is past due for any amount owed to us, at our option we may suspend any or all Services until we receive payment in full of all past due amounts, and/or convert your annual or other multi-month subscription to a monthly subscription. If we convert your multi-month subscription to a monthly subscription, we will first apply the amount you paid for your multi-month subscription to any past due amounts and then any remaining amounts to any obligations you incur in the future.

D. If we use a collection agency or attorney to collect any money you owe us or to assert any other right which we may have against you, you agree to pay the reasonable costs of collection or other action. These costs might include, but are not limited to, the costs of a collection agency, reasonable attorney's fees and court costs. If there are billing errors or other requests for credit, you may contact our Customer Service Center by telephone or in writing. You must contact us within twenty (20) days after the date you receive the billing statement for which you are seeking corrections. Failure to timely notify us of a dispute shall constitute your acceptance of the corresponding bill. Undisputed portions of a billing statement must be paid before the next billing statement is issued or you agree to pay an administrative fee for late payment. All payments for Services must be made directly by you to us. For example, DISH Network shall have no obligation to provide Services for which payment is made by you to a third party or payment is made by a third party on your behalf.

E. In addition to (and without limitation of) any amounts due for your Services and any other amounts due pursuant to any customer agreement(s) pursuant to which you are receiving Services and/or Equipment, you agree to pay the fees referenced below ("Fees") if and

DSH004

When applicable, DISH Network reserves the right to change these Fees, increase these Fees or add additional Fees at any time and from time to time, in our sole discretion, upon notice to you.

Additional Outlet Programming Access Fee (monthly, per each tuner after first):	\$4.99
DISH Network DVR Service Fee (monthly, per Digital Video Recording receiver):	\$8.99
Equipment Rental Fee (monthly, per leased receiver):	\$5.00
Late Payment Fee:	\$5.00
Live Operator Payment Fees:	\$5.00
Offset Fee:	\$2.00
Overnight Delivery Fee:	\$18.00
Pay-Per-View Automated Fees:	\$1.00
Pay-Per-View Live Operator Fees:	\$5.00
Restart Fee:	\$25.00
Returned Payment Fee:	\$10.00
Service Access Fee (monthly):	\$5.00
Smart Card Replacement Fee:	\$50.00
Transaction Fee:	\$5.00

In the event billing is provided through a third-party billing agent, the above fees may differ.

F. Different or other payment and billing terms and conditions may apply when billing is provided through a third-party billing agent, including without limitation, a local telephone company. See Section 8.F below.

3. CANCELLATION OF SERVICE

A. Your Services will continue until cancelled or disconnected as provided herein. Unless previously disconnected, your subscription will be automatically renewed unless and until you contact us to cancel it as provided in the next paragraph.

B. You have the right to cancel your Services for any reason and at any time by notifying us via telephone, via e-mail or in writing, at the phone number, e-mail address or mailing address set forth in the first paragraph of this Agreement. Please be aware that certain promotions have an optional or mandatory term agreement period and if you cancel your Services prior to the expiration of that optional or mandatory term agreement period, certain early termination or cancellation fees may apply.

C. In addition to all other rights that DISH Network may have to disconnect your Services, DISH Network has the right to disconnect your Services at any time without providing notice to you if: (i) you fail to pay any bill in full when it is due; (ii) we receive confirmation that you have received Services or any part of the Services, without paying for them; (iii) you otherwise violate the terms and conditions of this Agreement or any customer agreement(s) applicable to the promotion(s) pursuant to which you are receiving Services and/or Equipment; (iv) you transfer, encumber or relocate any leased Equipment (unless you relocate such equipment as part of a residential move into an area within which you can permissibly continue to receive such Services); (v) you assign or attempt to assign any of your rights, duties or obligations under the terms and conditions of this Agreement or any customer agreement(s) applicable to the promotion(s) pursuant to which you are receiving Services and/or Equipment; (vi) you are receiving Services through a third-party billing agent and become ineligible to receive applicable services provided by such third-party billing agent; or (vii) any act of bankruptcy on your part or the commencement of bankruptcy proceedings against you.

D. If your Services are canceled or disconnected for any reason, you are still responsible for the payment of all outstanding balances accrued, including without limitation any applicable fees.

E. You understand that, except in certain limited circumstances, charges for Services, once charged to your account, are nonrefundable and no refunds or credits will be provided in connection with the cancellation of subscriptions to Services. If you received a discounted price in exchange for your agreement to pay for your Services on a multi-month basis, and you cancel your Services prior to the expiration of your multi-month subscription, you understand and agree that you are not entitled to any refund or credit for the unused portions of your multi-month subscription.

4. EQUIPMENT

A. In order to receive Services it will be necessary for you to purchase or lease certain reception equipment consisting primarily of a DISH Network compatible satellite receiver(s), satellite antenna(s), low noise block converter(s) with integrated feed(s) and remote control(s) (collectively, "Equipment"). Receiver(s) provided to you may also be equipped with a conditional access card ("Smart Card") inserted into a slot in such receiver. Not all receivers with a Smart Card slot require Smart Cards for proper authorization. Smart Cards remain the property of DISH Network at all times and any tampering or other unauthorized modification to any Smart Card is strictly prohibited and may result in, and subject you to, legal action. You agree to return Smart Cards to us upon our request.

B. Smart Cards are non-transferable. Your Smart Card will only work in the DISH Network receiver to which it was assigned by DISH Network. If you report to our Customer Service Center that your Smart Card was lost, damaged, defective or stolen, then we will replace it, as long as there is no evidence of unauthorized tampering or modification. A replacement fee will apply ("Smart Card Replacement Fee"). In addition, in order to minimize downtime for your Equipment, DISH Network will, upon your request, deliver a replacement Smart Card to you via overnight delivery in which event our overnight delivery fee ("Overnight Delivery Fee") will apply.

C. DISH Network reserves the right to alter software, features and/or functionality in your DISH Network receivers, provide data and

DSH005

content to Personal Video Recorder/Digital Video Recorder ("PVR/DVR") products, store data and content on the hard drives of PVR/DVR products, and send electronic counter-measures to your DISH Network receivers, through periodic downloads. DISH Network will use commercially reasonable efforts to schedule these downloads to minimize interference with or interruption to your Services, but shall have no liability to you for any interruptions in Services arising out of or related to such downloads.

D. DISH Network's PVR/DVR Products allow you to record programming in digital format. Total recording time varies depending on your receiver and the nature of the programs being recorded. DISH Network does not guarantee access to or recording of any particular programming. Most programming is the copyrighted material of the third party that supplies it, is protected by copyright and other applicable laws, and may not be reproduced, published, broadcast, rewritten, or redistributed without the written permission of the third party that supplied it except as permitted by the "fair use" provisions of the U.S. copyright laws. DISH Network may, in its sole discretion, add, change or remove features of its PVR/DVR Products and, upon notice to you, introduce or change fees for the use of PVR/DVR Product features. DISH Network will notify you of any change that is within its reasonable control. Unless otherwise specified in the terms and conditions of the customer agreement(s) applicable to the promotion(s) pursuant to which you are receiving Services and/or Equipment, we will charge you a monthly DISH Network DVR service fee ("DISH Network DVR Service Fee") for each PVR/DVR receiver activated on your account.

E. DISH Network receivers contain components and software that are proprietary to DISH Network. You agree that you will not try to reverse-engineer, decompile or disassemble any software or hardware contained within any receiver or Smart Card. Such actions are strictly prohibited and may result in the termination of this Agreement, disconnection of your Services and/or legal action.

F. To optimize the operation of your Equipment, you must continuously connect each DISH Network receiver on your account to your satellite land-based telephone line. Failure to connect each receiver to your same land-based telephone line may result in interruption or disconnection of Services.

G. If your Equipment is stolen or otherwise removed from your premises without your authorization, you must notify our Customer Service Center by telephone or in writing immediately, but in any event not more than three (3) business days after such removal to avoid liability for payment for unauthorized use of your Equipment. You will not be liable for unauthorized use that occurs after we have received your notification.

H. You are licensed to use the software provided in your DISH Network receiver(s), as updated by DISH Network from time to time, solely in executable code form, solely in conjunction with the normal operation of the DISH Network receiver(s) that you purchased or leased, and solely for the purposes permitted under this Agreement. You may not copy, modify or transfer any software provided in your DISH Network receiver(s), or any copy thereof, in whole or in part. You may not reverse engineer, disassemble, decompile or translate such software, or otherwise attempt to derive its source code, except to the extent allowed under any applicable laws. Any attempt to transfer any of the rights, duties or obligations of this license agreement is null and void. You may not rent, lease, loan, resell for profit or distribute any software provided in your DISH Network receiver(s), or any part thereof. Such software is licensed, not sold, to you for use only under the terms and conditions of this license agreement, and DISH Network and its suppliers reserve all rights not expressly granted to you. Except as stated above, this license agreement does not grant to you any intellectual property rights in the software provided in your DISH Network receiver(s). If you breach any term or condition of this license agreement, this license agreement will automatically terminate.

5. LEASED EQUIPMENT

A. DISH Network may, from time to time, lease certain Equipment to subscribers. If you elect to lease Equipment from DISH Network, the terms and conditions of the customer agreement(s) applicable to the lease promotion(s) pursuant to which you are leasing such Equipment shall apply, which are in addition to, and without limitation of, the terms and conditions of this Agreement. Unless otherwise specified in such customer agreement(s), (i) such Equipment, except for the satellite antenna, shall at all times remain the sole and exclusive property of DISH Network and we will have the right, in our sole discretion, to provide or replace leased Equipment with newer or reconditioned Equipment and to remove, or require the return of, such Equipment upon cancellation or disconnection of your Services for any reason and (ii) we will charge you a monthly equipment rental fee (an "Equipment Rental Fee") for each leased receiver activated on your account. No leased Equipment provided to you by DISH Network shall be deemed fixtures or part of your realty. Our ownership of such Equipment may be displayed by notice contained on it. You shall have no right to pledge, sell, mortgage, otherwise encumber, give away, remove, relocate, alter or tamper with such Equipment (or any notice of our ownership thereon) at any time. Any reinstallation, return, or change in the location of such Equipment shall be performed by us at our service rates in effect at the time of such service. You shall not attach any electrical or other devices to, or otherwise alter, any such Equipment without our prior written consent. We reserve the right to make such filings as may be determined to be necessary by us in our sole discretion to evidence our ownership rights in such Equipment, and you agree to execute any and all documents as may be so determined to be necessary for us to make such filings. You are responsible for preventing the loss or destruction of leased Equipment and we recommend that such Equipment be covered by your homeowners, renters or other insurance policy.

B. Upon termination of your Services, you must notify our Customer Service Center or call the telephone number set forth in the customer agreement(s) applicable to the lease promotion(s) pursuant to which you are leasing the applicable Equipment to schedule the return of your leased Equipment. If such Equipment is not returned undamaged and in working order, normal wear and tear excepted, certain charges will apply as described in the customer agreement(s) applicable to the lease promotion(s) pursuant to which you are leasing such Equipment. You are responsible for, and agree to pay, any costs of repair, replacement or other costs if you do not return such Equipment undamaged and in working order, normal wear and tear excepted.

C. You shall notify us promptly of any defect in, damage to, or accident involving your leased Equipment. All maintenance and repair of such Equipment shall be performed by us or our designee(s). DISH Network may charge you for any repairs that are necessitated by any damage to, or misuse of, such Equipment.

DSH0008

6. TRANSFER OF ACCOUNT, SERVICES OR EQUIPMENT

DISH Network may sell, assign or transfer your account to a third party without notice to you. You may not assign or transfer your Services without our written consent, which will not be unreasonably withheld. We may, however, refuse to allow you to assign or transfer your Services if you lease your Equipment or if your account has an outstanding balance.

7. LIMITATION OF OUR LIABILITY

A. NEITHER WE NOR OUR THIRD PARTY BILLING AGENTS NOR ANY OF OUR OR THEIR AFFILIATES WILL BE LIABLE FOR ANY INTERRUPTIONS IN SERVICE OR FOR ANY DELAY OR FAILURE TO PERFORM, INCLUDING WITHOUT LIMITATION IF SUCH INTERRUPTION OR DELAY OR FAILURE TO PERFORM ARISES IN CONNECTION WITH THE TERMINATION OR SUSPENSION OF DISH NETWORK'S ACCESS TO ALL OR ANY PORTION OF SERVICES; THE RELOCATION OF ALL OR ANY PORTION OF THE SERVICES TO DIFFERENT SATELLITE(S), A CHANGE IN THE FEATURES AVAILABLE WITH YOUR EQUIPMENT, ANY SOFTWARE OR OTHER DOWNLOADS INITIATED BY US OR ANY ACTS OF GOD, FIRES, EARTHQUAKES, FLOODS, POWER OR TECHNICAL FAILURE, SATELLITE OR UP LINK FAILURE, ACTS OF ANY GOVERNMENTAL BODY OR ANY OTHER CAUSE BEYOND OUR CONTROL.

B. NEITHER WE NOR OUR THIRD PARTY BILLING AGENTS NOR ANY OF OUR OR THEIR AFFILIATES WILL BE LIABLE FOR ANY DAMAGE RESULTING FROM LOSS OF RECORDED MATERIAL OR THE PREVENTION OF RECORDING, INCLUDING WITHOUT LIMITATION ANY LOSS OF PREVENTION OF RECORDING DUE TO ANY FAULT, FAILURE, DEFICIENCY OR DEFECT IN SERVICES OR EQUIPMENT.

C. EXCEPT AS EXPRESSLY PROVIDED TO THE CONTRARY BY APPLICABLE STATE LAW, NEITHER WE NOR OUR THIRD PARTY BILLING AGENTS NOR ANY OF OUR OR THEIR AFFILIATES MAKE ANY WARRANTY, EITHER EXPRESSED OR IMPLIED, REGARDING YOUR DISH NETWORK EQUIPMENT OR ANY OTHER EQUIPMENT OR ANY SERVICES FURNISHED TO YOU. ALL SUCH WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED AND EXCLUDED.

D. IN NO EVENT SHALL WE, OUR THIRD PARTY BILLING AGENTS, OR ANY OF OUR OR THEIR AFFILIATES HAVE ANY LIABILITY FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO DISH NETWORK EQUIPMENT OR ANY OTHER EQUIPMENT OR RESULTING FROM OUR FURNISHING OR FAILURE TO FURNISH ANY SERVICES OR EQUIPMENT TO YOU; OR FROM ANY FAULT, FAILURE, DEFICIENCY OR DEFECT IN SERVICES OR EQUIPMENT FURNISHED TO YOU.

E. IT IS YOUR RESPONSIBILITY TO IMPOSE VIEWING RESTRICTIONS ON YOURSELF, MEMBERS OF YOUR FAMILY AND HOUSEHOLD, AND GUESTS, AS YOU DEEM APPROPRIATE. WE, OUR THIRD PARTY BILLING AGENTS, AND OUR AND THEIR AFFILIATES SHALL HAVE NO LIABILITY TO ANYONE DUE TO OR BASED UPON THE CONTENT OF ANY OF THE SERVICES FURNISHED TO YOU.

8. WARNING AGAINST TRACY AND INFRINGEMENT

A. It is a violation of various U.S. federal and state laws to receive any Services, or any portion of such Services, without paying for them. The penalties for violating such laws can include imprisonment and civil damage awards of up to \$10,000 per violation.

B. Title 47, Section 605(e)(4), United States Code (U.S.C.) makes it a federal crime to modify Equipment to receive encrypted (scrambled) television programming without payment of required subscriptions. Conviction can result in a fine of up to \$500,000 and imprisonment for five years, or both. Any person who procures Equipment that has been so modified is an accessory to that offense and may be punishable in the same manner. Investigative authority for violations lies with the Federal Bureau of Investigation. Equipment may incorporate copyright-protection technology that is protected by U.S. patents and other intellectual property rights. Use of such copyright protection technology must be authorized by Microvision, and is intended for home and other limited pay-per-view uses only, unless otherwise authorized by Microvision. Reverse engineering or disassembly is prohibited.

9. GENERAL

A. **Physical Address/Change of Address.** When setting up your DISH Network account, you agree to provide us with the physical street address where your Equipment will be located and your Services will be provided. A post office box does not constitute a physical address and is not sufficient to meet this requirement. You agree to give us prompt notice of your change of name, mailing address, physical address where your Equipment is located, and telephone number. You may do this by notifying our Customer Service Center by telephone or in writing at the phone number or mailing or e-mail address set forth in the first paragraph of this Agreement.

B. **Notice.** Any notice required or permitted to be given by us under this Agreement may be provided via the mail, on your billing statement, as a bill insert, via broadcast on a television channel, through publication on the website set forth in the first paragraph of this Agreement, by telephone or by any other reasonable means. If we send you notice by mail on your billing statement or as a bill insert, it will be considered given when deposited in the U.S. Mail, addressed to you at your then-current billing address in our records. If we send you notice via broadcast on a television channel or through publication on the website set forth in the first paragraph of this Agreement, it will be considered given when first broadcast or published. If we send you notice by telephone, it will be considered given when personally delivered to you or when left as a message at your then-current phone number in our records. Unless otherwise specified in this Agreement, any notice required or permitted to be given by you under this Agreement shall be in writing and shall be sent by first class mail addressed to us at the mailing address set forth in the first paragraph of this Agreement, and shall be deemed given when received by us at such mailing address.

C. **Credit Checks.** You authorize DISH Network to investigate your financial responsibility and creditworthiness, including without limitation acquiring credit reports and histories, and to report any payment defaults to credit reporting agencies. Under the Fair Credit Reporting Act, you have the right to notify DISH Network if you believe we have reported inaccurate information about your account in any consumer

reporting agency. Please include the specific item of dispute and why you believe the information reported is in error in any such notice.

D. Personal Information: If you have an on-line account with us, you are fully responsible for maintaining the confidentiality of your password and account username and for all activities that occur under your password and/or account username. You agree to: (i) keep your account username and password confidential and not share them with anyone else, and (ii) immediately notify us of any unauthorized use of your password and/or account username or other breach of security.

E. Applicable Law: This Agreement, including without limitation all matters relating to its validity, construction, performance and enforcement, and any claim, complaint or dispute arising out of or related to this Agreement or Services, shall be governed by the laws and regulations of the State of Colorado without giving effect to its conflict of law provisions. These terms and conditions are subject to amendment, modification or termination if required by such laws or regulations. If any provision in this Agreement is declared to be illegal or in conflict with any law or regulation, that provision shall be modified to the minimum extent necessary to make such provision legal and no longer in conflict with such law or regulation, without affecting the validity of any other provisions.

F. Third-Party Billing Agents: We may enter into relationships with third parties to provide billing and other services on our behalf, in which case the terms and conditions of this Agreement shall apply to such third parties as applicable under the circumstances. Additional terms and conditions imposed by our third-party billing agents, including without limitation, local telephone companies, may apply. For example, (and without limitation), late fees imposed by our third-party billing agents may be administered according to our third-party billing agent's billing procedures and applicable state tariffs and regulations; our third-party billing agents may require you to pay all past due charges for Services; a restart fee, and/or a prepayment before we reconnect your Services; other services provided by our third-party billing agents, including without limitation, local telephone service, may need to be restored before DISH Network Services can be restored, and a restart fee and deposit may be required to restore third-party billing agent services. Partial payments on third-party billing agent bills may be applied to the balance due for other services billed on your third-party billing agent bill, including without limitation, local telephone service, according to the third-party billing agent's billing procedures and applicable state statutes and regulations. Contact your third-party billing agent for details. Failure to pay all or any part of your third-party billing agent bill may result in disconnection of Services.

G. Remedies Cumulative: It is agreed that the rights and remedies provided under the terms and conditions of this Agreement to DISH Network in case of default or breach by you of this Agreement are cumulative and without prejudice to any other rights and remedies that DISH Network may have by reason of such default or breach by you at law, in equity, under contract or otherwise (all of which are expressly reserved).

H. Other: No salesperson, installer, customer service representative, authorized retailer, or other similarly situated individual is authorized to change the terms and conditions of this Agreement. DISH Network may, however, change the terms and conditions of this Agreement at any time and from time to time in its sole discretion and will notify you if that occurs. The terms and conditions of this Agreement that either are expressly stated to survive or by their nature would logically be expected to survive its expiration or termination shall continue thereafter until fully performed. This Agreement is in addition to any other written agreement(s), if any, between you and DISH Network, including without limitation any installation agreement or customer agreement(s), if any, applicable to the promotion(s) pursuant to which you are receiving Services and/or Equipment, and except as provided to the contrary herein all such written agreements shall remain in full force and effect. Except as expressly set forth in this Agreement to the contrary, any and all prior DISH Network Residential Customer Agreements are hereby replaced and superseded in their entirety by this Agreement, and such prior DISH Network Residential Customer Agreements shall be of no further force or effect whatsoever. In the event of any conflict or inconsistency between the terms and conditions of this Agreement and any customer agreement(s) applicable to the promotion(s) pursuant to which you are receiving Services and/or Equipment, the terms and conditions of such customer agreement(s) shall be controlling. In the event of any ambiguity between the terms and conditions of this Agreement and any customer agreement(s) applicable to the promotion(s) pursuant to which you are receiving Services and/or Equipment, DISH Network shall have the sole and exclusive authority to interpret and/or make a final determination in its sole discretion concerning any issue arising from such ambiguity.

[About Us](#) | [Careers](#) | [Site Map](#) | [Locate Retailer](#) | [DISH for Business & MDU](#) | [EchoStar Fixed Satellite](#)

Get DISH Network updates via email

enter e-mail address



DSH0008

**South Carolina Administrative Law Court (SC ALC)
Request for Contested Case Hearing FORM**

Last Name: Minnig First: Ellen Middle: Mr. Miss Mrs. Ms. Docket No. (To Be Completed by ALC)

Mailing Address: 9601 S. Meridian Blvd City: Englewood State and Zip: CO, 80112

Home Number: _____ Work Number: 303.723.1943 Cell Number: _____ *E-Mail Address: Ellen.Minnig@dish.com

*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission

REPRESENTATION

Are you representing yourself? Yes No If No, please complete the following:

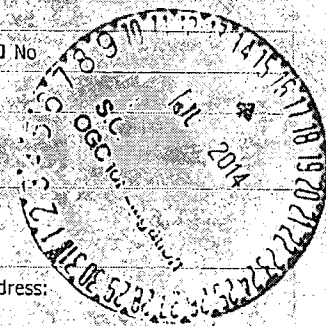
Are you represented by an Attorney? Yes No Are you represented by a CPA? Yes No

Name of Attorney: _____ Name of CPA: _____

Mailing Address: To Be Determined Mailing Address: _____

City, State and Zip: _____ City, State and Zip: _____

Work Number, Cell Number and E-mail Address: _____ Work Number, Cell Number and E-mail Address: _____



CASE INFORMATION

Name of the Agency that issued the decision: Dept. of Revenue
(Example - Dept. of Revenue, Dept. of Insurance, DHEC)

In order to have your case processed, you must attach the agency decision. Is it attached? If no, please explain:

Yes No

Date the decision was issued: 5/13/14 Date the decision was received: _____

Please provide a brief statement regarding why the hearing is being requested and the relief sought:

Please see attachment

Payment via Check Money Order Cash for \$ _____ (applicable filing fee pursuant to ALC Rule 71) is being submitted today to the Administrative Law Court via U.S. Postal Service Hand-delivery

[Signature] 6/12/14
X Your Signature or Signature of Attorney/CPA Date

CERTIFICATE OF SERVICE (MUST BE COMPLETED)

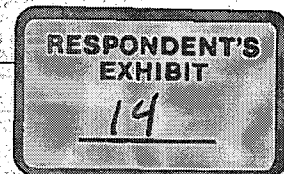
Your Name: ~~Ellen Minnig~~ Jeremy Terrell Date: 6/12/14 City: Englewood State: CO

I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing on all other parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names):

S.C Dept of Revenue PO Box 12265 Columbia, SC 29211
Name and/or Agency Address City, State and Zip

Name and/or Agency Address City, State and Zip

Jeremy E. Terrell 6/12/14
X Your Signature or Signature of Attorney/CPA Date



Statement of Relief Requested and Hearing Request

Dish objects to the inclusion of subscription receipts as South Carolina sourced receipts. DISH contends the subscription related income-producing activities are not performed in South Carolina, and the receipts from these activities should not be sourced to South Carolina for income tax or capital tax or "licensing fee" apportionment purposes. Dish has sourced the subscription receipts and paid tax on the receipts in another state(s). Dish objects to any addition of South Carolina income tax and civil penalties and interest, based on South Carolina's proposed assessment for tax years 2004-2010. Dish also objects to the assessed addition to license fees, and related penalties, and interest for periods 2006-2011.

RECEIVED

FEB 06 2017

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Case No. 14-ALJ-17-0285-CC

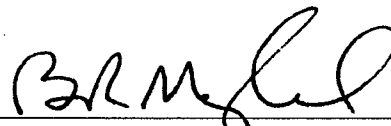
Dish DBS Corporation f/k/a EchoStar, DBS Corp. and Affiliates.....Appellant,

v.

South Carolina Department of Revenue.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this **Record on Appeal** complies with Rule 211(b),
SCACR.



Burnet R. Maybank, III
Jim Rourke
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202-2426
PHONE: 803.771.8900
FACSIMILE: 803.253.8277
bmaybank@nexsenpruet.com
jrourke@nexsenpruet.com
Attorneys for Appellant Dish DBS Corporation, f/k/a
EchoStar, DBS Corp., and Affiliates

Columbia, South Carolina
February 6, 2017