



# This Week in State Tax (TWIST)

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## Louisiana: On Demand and Pay-Per-View Programming are Exempt Cable Services

The Louisiana Board of Tax Appeals recently concluded that a cable television provider was not liable for local sales taxes on its sales of Video on Demand and Pay-Per-View programming. The matter involved several parishes that had audited the taxpayer and issued separate assessments that were consolidated before the Board. The issue in the case was simple- the taxpayer provided cable television services to subscribers via satellite transmission and broadband and offered subscribers the ability to purchase Video on Demand and Pay-Per-View programming for an additional cost. Under Louisiana law, there is a prohibition against imposing state and local sales taxes on amounts collected from a cable television subscriber for “regular service, installation and repairs.” The issue before the Board was whether the Video on Demand and Pay-Per-View transactions were considered “regular cable services” so that they were exempt from sales tax. The parishes appeared to argue that the transactions were akin to the sale or rental of tangible personal property. The Board noted at the outset that the case was very similar to *Normand v. Cox Communications* in which a Louisiana court determined that Cox’s Pay-Per-View and Video on Demand were regular cable services. However, unlike in *Cox Communications* where all programming was streamed in real time, the programming at issue could be downloaded and viewed at a later time. The Board, however, did not find the temporary storage of data in a customer’s cable box to require it to reach a different conclusion than the *Cox Communications* court. Importantly, the customer was still restricted in its viewing and use of the programming because all programming had to be decoded and interpreted by the set-top box, the programming could not be viewed on a different device, and the customer had no access to the content if their cable subscription expired. Further, the customers’ objective in purchasing the programming was to watch a movie or live event, not to obtain possession of packetized data. The parishes, the Board noted, urged it to find that *Cox Communications* was wrongly decided because the term tangible personal property was broadly defined. However, the Board noted that if the taxpayer’s programming was tangible personal property because the programming itself could be perceived, the cable exemption would be read virtually out of existence (except for installation and service) as all programming can be seen and heard. The Board also rejected the parishes’ assertion that the transactions at issue were taxable telecommunications services. Audio and video programming services were specifically excluded from the definition of telecommunications services. Finally, there were two Parishes that asserted direct-to-home satellite services were taxable; the Board also rejected this position as being preempted by the federal Telecommunications Act of 1996. Please contact [Randy Serpas](#) with questions on *DirectTV, LLC. V. City of Baton Rouge*.

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