

The Alabama Taxpayers' Newsletter TM

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The law firm of JEFF PATTERSON LLC was founded to represent taxpayers. Its clients include in-state and out-of-state business entities — both large and small — and individuals. Because JEFF PATTERSON LLC highly values confidentiality, the firm does not disclose the identity of its clients. Prior to founding the firm, Jeff Patterson practiced law inside the Alabama Department of Revenue for more than 13 years.

The firm represents clients before state and local tax agencies in Alabama, and before the IRS, and has represented clients before tax agencies in other states and before the United States Supreme Court. The following is a partial list of the firm's areas of representation:

- sales and use taxes
- income tax
- business privilege tax
- trust fund recovery penalty
- local taxes
- federal income/excise taxes
- tax incentives
- regulatory matters
- audits (incl. third party)
- tax litigation
- property tax
- tax-exempt recognition
- collection matters
- unclaimed property.

WHEN YOGI BERRA SAID, "IT'S LIKE DÉJÀ VU ALL OVER AGAIN," HE SHOULD HAVE BEEN SPEAKING OF THE REVENUE DEPARTMENT'S NETFLIX RULE

Once again, the Alabama Department of Revenue is attempting to amend a rental-tax rule to subject digital transmissions, such as on-demand movies, television programs, and streaming audio and video, to the state's rental tax. (Rule 810-6-5-.09) This effort was attempted by the ADOR in early 2015, but was opposed by those who believed that it was the place of the Legislature, and not the ADOR (which is within the Executive Branch), to make such a decision. The ADOR withdrew its previous proposed rule by letter dated July 7, 2015, after members of the Legislature's Joint Committee on Administrative Regulation Review expressed their disapproval.

The current proposed rule would tax "'on-demand' movies, television programs, streaming video, streaming audio, and other similar programs ..., regardless of the method of transmission, whether rented by subscription for a definite or indefinite period, or on an on-demand basis ..." Under the rule, providers of cable or satellite television, online movies and digital music, and others providing digital transmissions "are engaged in the business of leasing tangible personal property and shall be subject to the rental tax." The rule would exclude monthly video programming subscriptions by which the customer views "pre-set linear programming on the provider's pre-set schedule," if such charges are stated separately on the invoice and if "the nonlinear programming associated with the subscription is of nominal value." (The rule does not define "linear" or "nonlinear" programming or "nominal value.") But, the rental of items such as cable boxes, remote controls, modems, and routers, which perform additional functions besides the accessing of basic cable, would be subject to the tax. The rule would apply to transactions that occur on or after July 1, 2017.

By statute, Alabama's rental tax is levied on persons who are engaged within this state in the business of renting tangible personal property, and the statute defines such property as "personal property which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses." As stated in the proposed rule, the ADOR is again taking the position that digital transmissions constitute "tangible personal property" and thus are subject to the tax. Although the rule does not specify, the ADOR most likely takes the position that such transmissions are tangible because they can be "seen" or are "perceptible to the senses." Of course, the question remains whether the Legislature or the courts will approve.

The timing of the proposed rule is interesting, in that Senate President Pro Tem Del Marsh formed a digital-goods working group in the latter part of last year to study the issues concerning the taxation of digital goods. That group continues to discuss the matter. Nevertheless, Alabama Taxpayers may see an additional item – rental tax – on their digital services bill later this year.

A mandatory public hearing on the proposed rule will be held by the ADOR on April 11, 2017, at 1:30 pm CT, in Montgomery.

For more information, contact the firm. ■

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Parting Shot:

“The art of taxation consists in so plucking the goose as to obtain the largest amount of feathers with the least amount of hissing.” Jean-Baptiste Colbert

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