

**AMENDMENTS TO THE MULTI-CHANNEL
VIDEO OR AUDIO SERVICE TAX ACT**

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Thomas V. Hatch

LONG TITLE

General Description:

This bill amends the Multi-Channel Video or Audio Service Tax Act to impose an additional tax on multi-channel video or audio service.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ expands the definition of multi-channel video or audio service provider;
- ▶ imposes an additional tax on a purchaser of multi-channel video or audio service;
- ▶ addresses the imposition and collection of the tax;
- ▶ provides procedures for a county or municipality to elect to participate in the distribution of the revenues generated by the additional tax;
- ▶ provides procedures for a county or municipality to terminate the election to participate in the distribution of the revenues generated by the additional tax;
- ▶ authorizes the commission to retain an administrative fee from the additional tax;
- ▶ addresses the distribution of revenues generated by the additional tax to counties and municipalities that elect to participate in the distribution of the tax revenues;
- ▶ requires a multi-channel video or audio service provider to provide certain information to the State Tax Commission;
- ▶ requires the Revenue and Taxation Interim Committee to study the taxes imposed by the Multi-Channel Video or Audio Service Tax Act; and



28 ▶ makes technical changes.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 This bill takes effect on July 1, 2005.

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **59-26-101**, as enacted by Chapter 300, Laws of Utah 2004

36 **59-26-102**, as enacted by Chapter 300, Laws of Utah 2004

37 **59-26-103**, as enacted by Chapter 300, Laws of Utah 2004

38 **59-26-104**, as enacted by Chapter 300, Laws of Utah 2004

39 **59-26-105**, as enacted by Chapter 300, Laws of Utah 2004

40 **59-26-106**, as enacted by Chapter 300, Laws of Utah 2004

41 **59-26-107**, as enacted by Chapter 300, Laws of Utah 2004

42 **59-26-110**, as enacted by Chapter 300, Laws of Utah 2004



44 *Be it enacted by the Legislature of the state of Utah:*

45 Section 1. Section **59-26-101** is amended to read:

46 **59-26-101. Title.**

47 This chapter is known as the "Multi-Channel Video or Audio Service [~~Tax~~] Taxes Act."

48 Section 2. Section **59-26-102** is amended to read:

49 **59-26-102. Definitions.**

50 As used in this chapter:

51 (1) "Annexation" means an annexation to a:

52 (a) county under Title 17, Chapter 2, Annexation to County; or

53 (b) municipality under Title 10, Chapter 2, Part 4, Annexation.

54 (2) "Annexing area" means an area that is annexed into a county or municipality.

55 (3) "Franchise fee" means:

56 (a) one or more of the following amounts:

57 (i) an assessment;

58 (ii) a charge;

59 (iii) a fee;
 60 (iv) a tax; or
 61 (v) an amount similar to Subsections (3)(a)(i) through (iv) as determined by the
 62 commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative
 63 Rulemaking Act; and

64 (b) if the amount described in Subsection (3)(a) is:
 65 (i) provided for in a franchise agreement;
 66 (ii) consideration for the franchise agreement; and
 67 (iii) imposed:
 68 (A) by a county or municipality;
 69 (B) on a:
 70 (I) multi-channel video or audio service;
 71 (II) multi-channel video or audio service provider; or
 72 (III) purchaser of a multi-channel video or audio service; and
 73 (C) in accordance with state law or federal law.

74 ~~[(+)]~~ (4) (a) Subject to Subsection (4)(b) and except as provided in Subsection (4)(c),
 75 "multi-channel video or audio service provider" means any person or group of persons that:

76 ~~[(a)]~~ (i) provides multi-channel video or audio service and directly or indirectly owns a
 77 significant interest in the multi-channel video or audio service; or

78 ~~[(b)]~~ (ii) otherwise controls or is responsible through any arrangement, the
 79 management and operation of the multi-channel video or audio service~~;~~ and~~].~~

80 ~~[(2) "multi-channel"]~~ (b) "Multi-channel video or audio service provider" includes the
 81 following except as specifically exempted by state or federal law:

- 82 ~~[(a)]~~ (i) a cable operator;
- 83 ~~[(b) a CATV provider];~~
- 84 ~~[(c) a multi-point distribution provider;]~~
- 85 ~~[(d) a MMDS provider;]~~
- 86 ~~[(e) a SMATV operator;]~~
- 87 ~~[(f) a direct-to-home satellite service provider; or]~~
- 88 ~~[(g) a DBS provider.]~~
- 89 (ii) a community antenna television operator;

- 90 (iii) a direct broadcast satellite provider;
 91 (iv) a home satellite dish service provider;
 92 (v) a multipoint distribution service provider;
 93 (vi) a multi-channel multipoint distribution service provider;
 94 (vii) a master antenna television operator;
 95 (viii) an open video system operator;
 96 (ix) a satellite digital audio radio service provider;
 97 (x) a satellite master antenna television operator; or
 98 (xi) a satellite radio provider.
 99 (c) Notwithstanding Subsection (4)(a), "multi-channel video or audio service provider"

100 does not include:

- 101 (i) an information service as defined in 47 U.S.C. Sec. 153;
 102 (ii) the installation or maintenance of:
 103 (A) wiring; or
 104 (B) equipment;
 105 (iii) the sale or rental of equipment; or
 106 (iv) a charge relating to:
 107 (A) billing; or
 108 (B) collections.
 109 (5) "Municipality" means a city or town.

110 Section 3. Section **59-26-103** is amended to read:

111 **59-26-103. Imposition of taxes -- Rates.**

112 (1) Beginning on July 1, 2004, there is imposed as provided in this part a tax on the
 113 purchaser equal to 6.25% of amounts paid or charged for multi-channel video or audio service
 114 provided by a multi-channel video or audio service provider:

- 115 [~~(1)~~] (a) within the state; and
 116 [~~(2)~~] (b) to the extent permitted by federal law.

117 (2) In addition to the tax imposed by Subsection (1), there is imposed as provided in
 118 this part a tax on the purchaser equal to 3% of amounts paid or charged for multi-channel video
 119 or audio service provided by a multi-channel video or audio service provider:

- 120 (a) within the geographic limits of a county or municipality that participates in the

121 distribution of the tax in accordance with Section 59-26-105; and

122 (b) to the extent permitted by federal law.

123 Section 4. Section **59-26-104** is amended to read:

124 **59-26-104. Collection of taxes.**

125 A multi-channel video or audio service provider shall:

126 (1) collect ~~the~~ a tax imposed by Section 59-26-103 from the purchaser; and

127 (2) remit ~~the~~ a tax collected under Subsection (1) to the commission:

128 (a) quarterly on or before the last day of the month immediately following the last day

129 of each calendar quarter; and

130 (b) on a return prescribed by the commission.

131 Section 5. Section **59-26-105** is amended to read:

132 **59-26-105. Deposit of tax revenue.**

133 (1) The commission shall deposit revenues generated by the tax imposed by [~~this~~
134 ~~chapter~~] Subsection 59-26-103(1) into the General Fund.

135 (2) Revenues generated by the tax imposed by Subsection 59-26-103(2) shall be
136 distributed as provided in this section.

137 (3) (a) A county or municipality may participate in the distribution of the revenues
138 generated by the tax imposed by Subsection 59-26-103(2) if the county or municipality adopts
139 an ordinance:

140 (i) on or after July 1, 2005;

141 (ii) that provides that the county or municipality elects to participate in the distribution
142 of the revenues generated by the tax;

143 (iii) that provides that the county or municipality:

144 (A) except as provided in Subsection (3)(a)(iii)(B), waives any authority to impose a
145 franchise fee for the time period that the ordinance is in effect;

146 (B) notwithstanding Subsection (3)(a)(iii)(A), may impose a franchise fee:

147 (I) during the time period that the ordinance is in effect;

148 (II) as permitted by state law or federal law; and

149 (III) if the tax under Subsection 59-26-103(2) is invalidated by a court of competent
150 jurisdiction; and

151 (iv) in accordance with Subsection (4).

152 (b) A county or municipality may terminate the county's or municipality's election to
153 participate in the distribution of the revenues generated by the tax imposed by Subsection
154 59-26-103(2) if the county or municipality repeals the ordinance:

155 (i) described in Subsection (3)(a); and

156 (ii) in accordance with Subsection (4).

157 (4) (a) Except as provided in Subsection (4)(b) or (c), if a county or municipality
158 adopts the ordinance required by Subsection (3)(a) or repeals the ordinance in accordance with
159 Subsection (3)(b) to elect to participate in the distribution of the revenues generated by the tax
160 imposed by Subsection 59-26-103(2), the adoption or repeal of the ordinance shall take effect
161 on the first day of the first calendar quarter after a 90-day period beginning on the date the
162 commission receives notice from the county or municipality of the adoption or repeal of the
163 ordinance.

164 (b) Notwithstanding Subsection (4)(a), the adoption of an ordinance shall take effect on
165 the first day of the first billing period:

166 (i) that begins after the effective date of the adoption of the ordinance; and

167 (ii) if the billing period for the purchaser of the multi-channel video or audio service
168 subject to the tax imposed by Subsection 59-26-103(2) begins before the effective date of the
169 enactment of the ordinance.

170 (c) Notwithstanding Subsection (4)(a), the repeal of an ordinance shall take effect on
171 the first day of the last billing period:

172 (i) that began before the effective date of the repeal of the ordinance; and

173 (ii) if the billing period for the purchaser of the multi-channel video or audio service
174 subject to the tax imposed by Subsection 59-26-103(2) begins before the effective date of the
175 repeal of the ordinance.

176 (5) (a) Except as provided in Subsection (5)(b) or (c), if, for an annexation that will
177 result in the adoption of an ordinance under Subsection (3)(a) or the repeal of an ordinance
178 under Subsection (3)(b), the adoption or repeal of the ordinance shall take effect on the first
179 day of the first calendar quarter after a 90-day period beginning on the date the commission
180 receives notice from the county or municipality of the annexation.

181 (b) Notwithstanding Subsection (5)(a), the adoption of an ordinance shall take effect on
182 the first day of the first billing period:

183 (i) that begins after the effective date of the adoption of the ordinance; and
184 (ii) if the billing period for the purchaser of the multi-channel video or audio service
185 subject to the tax imposed by Subsection 59-26-103(2) begins before the effective date of the
186 enactment of the ordinance.

187 (c) Notwithstanding Subsection (5)(a), the repeal of an ordinance shall take effect on
188 the first day of the last billing period:

189 (i) that began before the effective date of the repeal of the ordinance; and
190 (ii) if the billing period for the purchaser of the multi-channel video or audio service
191 subject to the tax imposed by Subsection 59-26-103(2) begins before the effective date of the
192 repeal of the ordinance.

193 (6) The commission may retain an amount of the revenues generated by the tax
194 imposed by Subsection 59-26-103(2) in an amount not to exceed the lesser of:

195 (a) 1.5%; or

196 (b) an amount equal to the cost to the commission of administering the tax imposed by
197 Subsection 59-26-103(2).

198 (7) After the commission retains the amount described in Subsection (6), the
199 commission shall distribute to each county or municipality that elects to participate in the
200 distribution of the revenues generated by the tax imposed by Subsection 59-26-103(2) in
201 accordance with this section a percentage of the remainder of the revenues generated by the tax
202 imposed by Subsection 59-26-103(2):

203 (a) for a county, equal to the percentage by which the total number of purchasers within
204 the unincorporated areas of the county bears to the total number of purchasers in all of the
205 counties and municipalities that have ordinances in effect in accordance with this section; or

206 (b) for a municipality, equal to the percentage by which the total number of purchasers
207 within the municipality bears to the total number of purchasers in all of the counties and
208 municipalities that have ordinances in effect in accordance with this section.

209 (8) The commission shall make a distribution required by Subsection (7) to a county or
210 municipality quarterly.

211 Section 6. Section **59-26-106** is amended to read:

212 **59-26-106. Records.**

213 (1) A multi-channel video or audio service provider shall maintain records, statements,

214 books, or accounts necessary to determine the amount of tax that the multi-channel video or
215 audio service provider is required to remit to the commission under this chapter.

216 (2) The commission may require a multi-channel video or audio service provider to
217 make or keep the records, statements, books, or accounts the commission considers sufficient
218 to show the amount of tax for which the multi-channel video or audio service provider is
219 required to remit to the commission under this chapter:

220 (a) by notice served upon that multi-channel video or audio service provider; or

221 (b) by administrative rule made in accordance with Title 63, Chapter 46a, Utah
222 Administrative Rulemaking Act.

223 (3) After notice by the commission, a multi-channel video or audio service provider
224 shall open the records, statements, books, or accounts specified in Subsection (2) for
225 examination by the commission or a duly authorized agent of the commission.

226 (4) A multi-state video or audio service provider shall provide to the commission with
227 each return that the multi-state video or audio service provider files to remit a tax under this
228 chapter:

229 (a) the total number of purchasers in the unincorporated areas of each county from
230 which the multi-state video or audio service provider collects a tax under this chapter; and

231 (b) the total number of purchasers in each municipality from which the multi-state
232 video or audio service provider collects a tax under this chapter.

233 Section 7. Section **59-26-107** is amended to read:

234 **59-26-107. Action for collection of tax -- Action for refund or credit of tax.**

235 (1) Except as provided in Subsections (2) through (5):

236 (a) the commission shall assess a tax under this chapter within three years after a
237 multi-channel video or audio service provider files a return; and

238 (b) if the commission does not assess a tax under this chapter within the three-year
239 period provided in Subsection (1)(a), the commission may not commence a proceeding to
240 collect the tax.

241 (2) The commission may assess a tax at any time if a multi-channel video or audio
242 service provider:

243 (a) files a false or fraudulent return with intent to evade; or

244 (b) does not file a return.

245 (3) The commission may extend the period to make an assessment or to commence a
246 proceeding to collect ~~the~~ a tax under this chapter if:

247 (a) the three-year period under Subsection (1) has not expired; and

248 (b) the commission and the multi-channel video or audio service provider sign a
249 written agreement:

250 (i) authorizing the extension; and

251 (ii) providing for the length of the extension.

252 (4) If the commission delays an audit at the request of a multi-channel video or audio
253 service provider, the commission may make an assessment as provided in Subsection (5) if:

254 (a) the multi-channel video or audio service provider subsequently refuses to agree to
255 an extension request by the commission; and

256 (b) the three-year period under Subsection (1) expires before the commission
257 completes the audit.

258 (5) An assessment under Subsection (3) shall be:

259 (a) for the time period for which the commission could not make an assessment
260 because of the expiration of the three-year period; and

261 (b) in an amount equal to the difference between:

262 (i) the commission's estimate of the amount of tax the multi-channel video or audio
263 service provider would have been assessed under this chapter for the time period described in
264 Subsection (5)(a); and

265 (ii) the amount of tax the multi-channel video or audio service provider actually paid
266 for the time period described in Subsection (5)(a).

267 (6) (a) Except as provided in Subsection (6)(b), the commission may not make a credit
268 or refund unless the multi-channel video or audio service provider files a claim with the
269 commission within three years of the date of overpayment.

270 (b) The commission shall extend the period for a multi-channel video or audio service
271 provider to file a claim under Subsection (6)(a) if:

272 (i) the three-year period under Subsection (6)(a) has not expired; and

273 (ii) the commission and the multi-channel video or audio service provider sign a
274 written agreement:

275 (A) authorizing the extension; and

276 (B) providing for the length of the extension.
277 Section 8. Section **59-26-110** is amended to read:
278 **59-26-110. Revenue and Taxation Interim Committee study.**
279 The Revenue and Taxation Interim Committee shall during the [~~2004~~] 2005 interim:
280 (1) study the [~~tax~~] taxes imposed by this chapter;
281 (2) recommend whether legislation should be drafted to modify any provision of this
282 chapter; and
283 (3) prepare any legislation that the Revenue and Taxation Interim Committee
284 recommends in accordance with Subsection (2) for consideration by the Legislature during the
285 [~~2005~~] 2006 General Session.
286 Section 9. **Effective date.**
287 This bill takes effect on July 1, 2005.

Legislative Review Note
as of 2-9-05 3:53 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

State Impact

Passage of this bill could increase local revenues by \$5,546,000 in FY 2006 and by \$5,879,000 in FY 2007.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
Local Revenue	\$0	\$0	\$5,546,000	\$5,879,000
TOTAL	\$0	\$0	\$5,546,000	\$5,879,000

Individual and Business Impact

Individuals would see an increase of 3 percent on their bills. This would be approximately \$24 annually.

Office of the Legislative Fiscal Analyst