

OHIO BOARD OF TAX APPEALS

Time Warner Operations, Inc.,)
)
 Appellant,)
)
 vs.)
)
 Thomas M. Zaino,)
 Tax Commissioner of Ohio,) **Reversed on Appeal 12/13/06 Ohio Supreme Court**
)
 Appellee.) **111 Ohio St.3d 559, 2006-Ohio-6210**

APPEARANCES:

For the Appellant - Kegler, Brown, Hill & Ritter
Paul D. Ritter, Jr.
65 East State Street, Suite 1800
Columbus, OH 43215

For the Appellee - Jim Petro
Attorney General of Ohio
Richard C. Farrin
Assistant Attorney General, Taxation Section
State Office Tower – 16th Floor
30 East Broad Street
Columbus, OH 43215

Entered September 16, 2005

Ms. Margulies, Mr. Eberhart, and Mr. Dunlap concur.

This matter is before the Board of Tax Appeals upon a notice of appeal filed by Time Warner Operations, Inc. (“TWO”) on November 21, 2003. TWO appeals from a final determination of the Tax Commissioner, in which the commissioner affirmed, as adjusted, a previously issued sales tax assessment, assessment no. 7010402502, for the period July 1, 1992

through December 31, 1996. The original assessment of \$1,721,862.57 was modified to include \$747,406.91 in tax and \$384,639.54 in interest. The commissioner also canceled the penalties.

The two items at issue in this matter involve the taxability of revenue collected by TWO from its customers for converter boxes and remote control units. These are the same issues that were addressed in the companion appeal, *Time Warner Entertainment v. Zaino*, BTA No. 2003-R-1810, unreported, issued this same date.

Therefore, based upon the same facts, case law, and analysis, and consistent with our findings in the companion case, the board finds that the converter boxes are essential in the distribution of cable television services, and as a result, the revenue from the converter boxes is exempt from sales tax. Furthermore, the board finds that the remote control units were not essential in providing customers with continuous cable television services. Therefore, the revenue from the remote control units is not exempt from sales tax.

Based upon all of the foregoing, the Board of Tax Appeals orders that the Tax Commissioner's final determination must be, and the same hereby is, affirmed in part, and reversed in part.

ohiosearchkeybta

¹ There is a companion case to this one, docketed as *Time Warner Entertainment v. Zaino*, BTA No. 2003-R-1810. It involves the same issues as found in the present appeal, but for a different geographic region.