BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 55537
Petitioner: **DIRECTV, INC.,** v. Respondent: **ADAMS COUNTY BOARD OF COMMISSIONERS.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on May 14, 2012, James R. Meurer and Gregg Near presiding. Petitioner was represented by Alan Poe, Esq. Respondent was represented by Doug Edelstein, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 2007, 2008 and 2009.

Subject property is described as follows:

Adams County Schedule Numbers: **P0020943**
P0020944
P0020945
P0020946
P0020947
P0020948
P0020949
P0020950
P0020951
P0026686

The subject property consists of satellite television "set top boxes" owned by Petitioner and leased to customers. Set top boxes consist of four different types of devices generally known as digital video recorders. Petitioner installs the antenna, cable, cable hanger, and noise reduction filter attached to the home and sold to the subscriber. Petitioner owns only the set top boxes.

Petitioner presented the following indicators of value:

For 2007:	$91,147.00
For 2008:	$436,889.00
For 2009:	$291,972.00

Petitioner's witness, Jennifer Kawata, DIRECTV's Director of Accounting, testified that DIRECTV changed their business model in 2006 to a "lease model." Previously, all equipment was the property of the subscriber. Following the change in the business model, DIRECTV has been retaining the ownership of the set top boxes, while leasing them to the subscribers. Ms. Kawata referenced Petitioner's Exhibit 2 to illustrate the accounting procedure separating the acquisition cost of the four different types of set top boxes and their software. The reported costs include an estimate of sales tax on a national basis and cost of transporting the units to a regional distribution center. Ms. Kawata described the set top box as a "plug and play" item.

Petitioner's witness, Sam Ang, Director of Taxes for DIRECTV, described the accounting work necessary to comply with the change to a lease model. Mr. Ang discussed how the set top boxes are held for consumption by the business. Citing *EchoStar Satellite, LLC v. Arapahoe County Board of Equalization*, 171 P.3d 633 (Colo. App. 2007), Mr. Ang contended that an exemption from property taxes applies to personal property with an acquisition cost of $250.00 or less. Mr. Ang filed tax returns for the 2007-2009 tax years indicating a "$0" average value for Petitioner's inventory. Mr. Ang later amended the returns because one of the four types of set top boxes and certain boxes included in an earlier merger with Primestar had an acquisition cost exceeding $250.00.

Petitioner's witness, Trevor Steinmark, Director of Financial Operations, testified regarding Petitioner's procedures for installation. DIRECTV contracts with a third party for these services. Costs for installation ranged from $113.00 to $125.00 during the base period. Additional outlets or relocations were charged from $36.00 to $40.00 each. Customers averaged 2.5 added outlets or relocations per installation. Mr. Steinmark indicated approximately 2 hours per installation with each additional outlet adding from 30-45 minutes. The connection of the set top box consumes 5 to 6 minutes of the basic installation.

Respondent presented the following indicators of value:

For 2007:	$901,890.00
For 2008:	$1,856,787.00
For 2009:	$1,281,433.00

Respondent's witness, Ken Beazer, a Registered Appraiser and Tax Specialist for Adams County, testified regarding the appropriate "trade level" to apply to the set top boxes. Mr. Beazer related contact with Mr. Ang in 2009 regarding "bulk invoices" for multiple boxes. Based on the discussion and the invoices provided, Respondent determined that the prices reported by Petitioner represented the "manufacturer's cost" trade level. Respondent argued that because the manufacturer's cost does not represent the appropriate retail "end user" trade level, it must be adjusted upward for installation, sales/use tax and shipping to the point of use. To adjust the bulk invoices, Mr. Beazer researched retail prices from local outlets and determined additional costs of 8%-8.5% for taxes, a mark-up of 10% - 20%, and installation costs of $60.00-$80.00 per unit. Mr.

Beazer testified that the subject property should more reasonably be classified at the "wholesale" trade level.

Respondent's witness, Cindy Wittmus, an employee of the Adams County Assessor's Office, testified regarding the process applied to determine the appropriate taxable amounts. Ms. Wittmus related how her office had received Mr. Ang's original tax returns and the amended returns recognizing those set top boxes with an acquisition cost exceeding $250.00. Ms. Wittmus then discussed the process whereby purchases for locations outside of Adams County were subtracted from the data provided. The data was then reduced to isolate purchases of units over $250.00 to determine the appropriate costs.

Both sides agreed to the actual costs presented in Petitioner's Exhibit 2 and to the application of the four-year depreciation schedule.

Petitioner contends that Respondent has applied the incorrect trade level to the subject and is therefore attempting to add installation costs, sales taxes and freight for portions of the system that are actually associated with the subscriber's property and not Petitioner's.

Respondent contends that Petitioner failed to properly disclose individual prices for set top boxes and reported "wholesale" costs that properly should be adjusted by 10% to 20% to represent the "end user" cost.

Petitioner presented sufficient probative evidence and testimony to prove that the tax years 2007, 2008 and 2009 valuations of the subject property were incorrect.

The Board was persuaded by the testimony of Cindy Wittmus that the calculations used to determine the taxes were incorrect. Ms. Wittmus, in utilizing the data provided by Petitioner, incorrectly totaled all purchases that exceeded $250.00. Ms. Wittmus stated she failed to consider the number of units involved in the purchase. This resulted in an incorrect assessment. The Board was also persuaded by Petitioner's arguments regarding ownership of the set top boxes and agrees that Petitioner is the "end user."

The Board concludes that the 2007, 2008 and 2009 actual values of the subject property should be reduced to the following:

For 2007:	$91,147.00
For 2008:	$436,889.00
For 2009:	$291,972.00

Petitioner requested the Board for an award of delinquent interest on the taxes collected on the subject property during the 2007-2009 tax years. Petitioner's request is appropriately addressed to the treasurer, pursuant to Section 39-10-114, C.R.S.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on the 2007, 2008 and 2009 actual values for the subject property as follows:

For 2007:	$91,147.00
For 2008:	$436,889.00
For 2009:	$291,972.00

The Adams County Assessor is directed to change his/her records accordingly.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

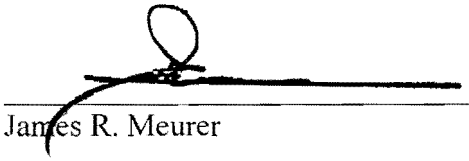
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 4th day of June, 2012.

BOARD OF ASSESSMENT APPEALS



James R. Meurer

55537

Gregg Near

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Milla Crichton