Wolters Kluwer

Release Notes

April 2023

Telecommunications Sales Tax Rates and Taxability

Welcome to the Telecommunications Database

This bulletin provides important information about the April 2023 release of Telecommunications Rates and Taxability. Please review this bulletin carefully. If you have any questions or require more information, please call 1-800-739-9998. You can also submit a ticket at http://support.cch.com/ticket or use http://support.cch.com/chat/salestax.

New Taxes Added to the Database Effective April 2023

Reconfiguration of the California Public Purpose Program Fees

Among the taxes covered in our database are the California Public Purpose Program fees which are comprised of the following surcharges that must be collected on telecommunications users' bills:

- California Telecommunications Relay Surcharge (captured in the database as Tax Type '09').
- California Teleconnect Fund Surcharge (captured in the database as Tax Type '18').
- California High-Cost Fund (A) Surcharge (captured in the database as Tax Type '19').
- California Advanced Services Fund Surcharge (captured in the database as Tax Type '20').
- California Universal Lifeline Surcharge (captured in the database as Tax Type '22').

Prior to this month's release, our database reflected that these surcharges were imposed based on a percentage of gross receipts. However, effective April 1, 2023, the California Public Purpose Program fees will now instead be imposed on the basis of a monthly access line charge equal to $1.11 per "access line".

To quote the opening paragraph from the order issued by the California Public Utilities Commission that implemented this major overhaul:

"This decision adopts a new surcharge mechanism to fund California's Universal Service Public Purpose Programs (PPPs). The new mechanism assesses surcharges based on the number of active access lines that a telephone corporation operates in California.

This decision defines "access line." Instead of the current system of an individual surcharge line item for each of the six PPPs, a customer's bill will now show a single consolidated surcharge amount for the six PPPs.

[Prior to April 1, 2023] the PPP surcharges and the user fee [were] assessed on revenue from intrastate telecommunications services sold in California. These surcharges [were] assessed and collected by telephone corporations as a percentage of an end user's telecommunications bill. These carriers reported and remitted the surcharges monthly or bi-annually to the Commission."[1]

The California PUC justified its major reconfiguration of the funding mechanism of the California Universal Service Programs as follows:

[1] California Public Utilities Commission Decision #22-10-021 (2022 CAL. PUC LEXIS 452) dated October 20, 2022.

“Parties' comments demonstrate that telephone corporations, although required to remit PPP surcharges, are doing so in a non-uniform manner. Cox's comments point to different regulatory classifications and applicable law as an explanation for the disparity. Verizon's comments point to rate plans that do not offer the same types of services and include differing combinations of services, such as bundled telecommunications and data services, pure telecommunications services, and only broadband data services.

Regardless of the underlying reasons for the decline in carrier remittances of PPP surcharges, it is clear from the record that the Commission must act now to ensure universal service. We find that the current revenue-based surcharge mechanism is no longer adequate to support our universal service programs. This finding is consistent with the information provided in both SR1 and SR2, as well as in parties' comments. Therefore, it is reasonable for the Commission to consider adopting a new surcharge mechanism which would not be affected by the aforementioned factors such as differences among carriers in how they allocate telecommunications services subject to PPP surcharges assessment.

The current revenue-based mechanism is problematic because it allows carriers to determine their intrastate telecommunications revenue amount based on various methodologies. This is not sustainable or equitable. As noted in the SR1, PPP funds have significantly decreased under the current revenue-based approach, due partly to the trend with wireless carriers reporting declining intrastate telecommunications revenue amounts, while at the same time reporting increased amounts for revenue associated with **non-telecommunications services** that are not subject to **state** or **federal universal service obligations**. Specifically, the FCC's reclassification of **voicemail**, **text messaging**, and **Internet/data services** from **telecommunications services** (Title II) to **information services** (Title I) removed these services from inclusion in intrastate revenue calculations. This limits the number of services and amount of revenues contributing to state universal service programs.”

Upon evaluating feedback from various carriers and other interested parties, the California PUC adopted the following set of definitions with which to govern the new surcharge methodology:

"**Access Line**" means a wire or wireless connection that provides a **real-time two-way voice telecommunications service** or **VoIP service** to or from any device utilized by an end user, regardless of technology, which is associated with a 10-digit NPA-NXX number or other unique identifier and a service address or Place of Primary Use in California.

"**Telecommunications**" has the same meaning as in 47 U.S.C. Section 153(50):

"The term '**telecommunications**' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."

"**VoIP service**" means service as defined in Public Utility Code Section 239.

"**Service address**" means the physical address in California where fixed telecommunication service is provided.

"**Place of primary use**" is defined (a) for **mobile telecommunications service** in Public Utility Code Section 247.1(c)(6); and (b) for **interconnected VoIP service providers** in Public Utility Code Section 285(d).”

The PUC staff also offered the following “Additional Guidelines” to help carriers comply with the new assessment methodology for purposes of their sale of multi-channel product offerings:

“For purposes of this definition, **private branch exchange (PBX) lines** and **Centrex lines** are "**access lines**."

The number of **access lines** a carrier provides to an end user shall be deemed equal to the number of inbound or outbound **two-way communications** by any technology that the end user can maintain at the same time as provisioned by the carrier's service.”

Additionally, the California PUC defended its decision to impose the exact same uniform flat-fee assessment methodology applicable to landline and wireless carriers upon VOIP carriers. Specifically, the Commission wrote as follows:

“**Applicability of access line-based surcharge mechanism to VoIP telephone corporations**.

AT&T argues that "changing the current PPP surcharge mechanism based on a percentage of intrastate revenues to a flat per access line surcharge for interconnected VoIP providers would appear to violate Section 285(c)."

AT&T cites to language in Section 285(c) that states, "the commission shall require **interconnected VoIP service providers** to collect and remit surcharges on their California intrastate revenues.

Cal Advocates' reply comments rebut AT&T's argument, asserting that the PD does not rely on Section 285(c) as the basis for applying the **access line-based surcharge mechanism** to **VoIP carriers**. Specifically, Cal Advocates states: "While PU Code Section 285 previously included language on how PPP surcharges assessed on **interconnected VoIP customers** must be collected, Assembly Bill (AB) 14 removed that provision in 2021. AT&T's narrow interpretation of the Commission's ability to assess a flat surcharge is contrary to legislative intent; one of AB 14's authors' websites states that the bill's purpose is to 'bring forward the funding and reforms necessary to truly achieve Internet for all.' While PU Code Section 285 does mention intrastate revenues, it no longer prescribes the method to calculate surcharge revenue."

We disagree with AT&T's assertion that we would be violating Section 285 in applying the **access line-based PPP surcharge mechanism** to **VoIP carriers**. We must interpret Section 285 in the context of recent amendments pursuant to AB 14 (2021), as well as our broad regulatory jurisdiction over VoIP carriers as public utility telephone corporations.

As we recently noted in R.22-08-008, under California law "the means by which service is provided, whether it be traditional landline, wireless technology, or IP-enabled, does **not** affect whether the provider meets the definition of a public utility telephone corporation. **VoIP service providers** fall within the definition of 'Telephone Corporation' under § 234, and their facilities fall within the definition of 'Telephone Line' pursuant to § 233. Thus, **VoIP carriers** are subject to the Commission's jurisdiction."

In 2011, the Legislature enacted AB 841, codified as Section 285, with the "sole purpose" to expressly authorize the Commission to require interconnected VoIP carriers to collect and remit surcharges in support of public purpose programs. Prior to that, the Commission had only imposed PPP surcharges on traditional wireline and wireless carriers. But, no similar statute was necessary for the Commission to require these types of telephone corporations to assess PPP surcharges.

The passage and enactment of SB 1161, codified as Section 710, limited the Commission's ability to regulate **VoIP carriers** from 2012 to January 1, 2020, unless expressly authorized by statute. Thus, the Commission relied on Section 285 as the basis for continuing to require **VoIP carriers** to collect and remit PPP surcharges. Section 285 did not expressly authorize the Commission to require **VoIP carriers** to do the same for the user fee, and therefore the Commission did not apply the user fee requirements to them.

When Section 710 expired January 1, 2020, state law no longer prevented the Commission from regulating VoIP carriers. As **VoIP carriers** are public utility telephone corporations, the Commission no longer needed to rely on Section 285 as the basis for its authority to require **VoIP carriers** to contribute to the state's PPP funds. Our authority to require **VoIP carriers** to assess surcharges and user fees derives from our plenary authority over ***telephone corporations***, a public utility class within which **VoIP**, **traditional wireline**, and **wireless carriers** fall.

Thus, the Commission is not prohibited from adopting a different universal service contribution mechanism, such as the access line-based mechanism this decision adopts, than the one Section 285 initially created for **VoIP carriers** in 2011.

Moreover, AB 14 enacted in 2021 repealed parts of Section 285 that authorized specific surcharge collection methodologies used by **VoIP carriers** to determine surcharge amounts for VoIP service, which related to how they were to identify intrastate revenues.

By eliminating those specific methods for calculating intrastate revenues, the Legislature intended for the Commission to have flexibility in adopting a surcharge mechanism that was not tied to a revenue-based mechanism. Indeed, the September 7, 2021, Senate Floor Analyses directly supports this interpretation.

Accordingly, we find that Section 285 does not prevent us from adopting an access line-based surcharge mechanism that applies to **VoIP carriers**."

The PUC finalized its decision by adopting the following set of ordering clauses:

"1. All **telephone corporations**, including **traditional wireline**, **wireless** and **Voice over Internet Protocol (VoIP) carriers** or **providers**, operating in California shall assess, collect, and remit California's Public Purpose Program surcharges pursuant to the access line flat rate surcharge mechanism adopted in this decision.

2. All **telephone corporations**, including **traditional wireline**, **wireless** and **Voice over Internet Protocol carriers** or **providers**, shall report their access lines used to provide two-way communication, as defined in this decision.

3. The user fee shall continue to be assessed and collected based on intrastate telecommunications revenues until the Commission examines this issue further in Phase 2.

4. Incarcerated individuals are exempt from the Public Purpose Program surcharges and the user fee.

5. **LifeLine subscribers** shall continue to be exempt from the Public Purpose Program surcharges and user fees.

6. All **telephone corporations**, including **traditional wireline**, **wireless** and **Voice over Internet Protocol carriers** or **providers**, shall implement the new access line flat rate surcharge collection and remittance mechanism adopted in this decision, beginning April 1, 2023.

7. A **per access line surcharge rate** of **$ 1.11** will go into effect on April 1, 2023, and shall remain in effect until the Commission adopts a different rate.

8. The **$ 1.11 access line-based surcharge rate** effective April 1, 2023 is intended to fund all of California's universal service programs until the Commission updates the rate using its resolution process.

9. Beginning June 9, 2023, all **telephone corporations**, including **traditional wireline**, **wireless** and **Voice over Internet Protocol carriers** or **providers**, shall report their access line data, as required by this decision, in the CPUC's new Telecommunications and User Fee Filing System portal."

Thus, in order to implement this reconfiguration of the methodology as to how the California Public Purpose Program fees are imposed, we are hereby deleting all of the above referenced percentage-based fees and their associated Tax Types (09, 18, 19, 20, 22) and replacing them with the new flat-fee per access-line surcharge which will be captured by a new Tax Type/Tax Cat combination, namely Tax Type **64/11**.

Additionally, please note that based upon the content of California PUC Decision 22-10-021, we are hereby applying this new California Public Purpose Program Surcharge to the following Group & Item codes in our database for all Customer Types except Customer Type 09 (Lifeline Subscribers):

Group 5002 (Local Basic Service); Items 001, 008, 010, & 012-014

Group 5006 (Cellular Service); Items 001, 011

Group 5018 (Cellular Prepaid Service); Item 006

Group 5025 (Cellular Monthly Service): Items 001, 017 & 019

Group 5032 (Interconnected VOIP – Fixed); Items 001, 002, 013, 015 & 021

Group 5034 (Bundled Service Plan); Items 001 & 002

Group 5036 (Cellular Prepaid – Retail); Item 004

Group 5041 (Wireless VOIP); Items 001 & 002

Group 5032 (Interconnected VOIP – Nomadic); Items 001, 002, 013, 015 & 021

Group 5052 (Prepaid Wireless Service); Item 001

To summarize the major data values associated with this new Tax Type & Tax Cat combination:

Provisions of the California Public Purpose Program Fee

SHOWN ON CUSTOMER'S BILL AS: "CA PUBLIC PURPOSE PROGRAM FEE"

Rate – $1.11 per access line

Pass-through of the Fee to Customers – PASSFLAG = 1 (Required)

Level of Taxation - Tax is on the State level

Tax-type – 64 (Miscellaneous Surcharge)

Tax-cat – 11 (Access Line)

Base-type – 06 (Consumer – Access Line)

Effective date = April 1, 2023

Updates to Current Telecommunications Database - Taxability Changes Effective April 2023

Change to the Taxability Status of Text Messaging Services for Purposes of the Eugene, Oregon Annual Registration Fee

Among the taxes covered in our database is the Eugene, Oregon Annual Registration Fee (as captured by Tax Type 38/80) equal to 2% of gross revenues. Prior to this month's release, our database reflected that this variation of a local license fee was not imposed upon charges for Text Messaging Services (as captured by Group & Item code 5037/007).

However, based upon a fresh review of governing legislative sources, it is now our fresh interpretation that charges for Text Messaging Services are implicitly subject to the Eugene, Oregon Annual Registration Fee. The basis of this determination is as follows:

As per the governing section of the Eugene Municipal Code which establishes this assessment:

"Each person required to register under section 3.405 of this code, except an operator of a private communications system, shall pay to the city an annual registration fee in the amount of 2% of the registrant's gross revenues derived from its **telecommunication activities** within the city."[2]

In turn, the term "Telecommunication activities" is defined to include "**telecommunication services**."[3]

Meanwhile, the term "telecommunication services" is defined as follows:

"Telecommunications services" [means] "The transmission for hire, of information in electromagnetic frequency, electronic or optical form, including, but not limited to, voice, video, or data, whether or not the transmission medium is owned by the provider itself, and whether or not the transmission medium is wireline or **wireless**."[4]

The same provision adds: "Telecommunications service includes all forms of telephone services and voice, data and video transport."[5]

Implicitly, this definition is broad enough to include text messaging, an interpretation which has since been confirmed by a local official.[6]

Based upon this guidance, we are hereby modifying our database, effective with this month's release to reflect that the Eugene, Oregon Annual Registration Fee (as captured by Tax Type 38/80) is imposed upon charges for Text Messaging Services (as captured by Group & Item code 5037/007).

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[2] Eugene, Oregon Municipal Code § 3.415(1).
[3] Eugene, Oregon Municipal Code § 3.005.
[4] Eugene, Oregon Municipal Code § 3.005.
[5] Eugene, Oregon Municipal Code § 3.005.
[6] E-mail reply from Pam Berrian, Telecommunications Program Manager – City of Eugene dated February 20, 2023.

Change to the Taxability Status of 800 Number Services for Purposes of the Georgia Universal Access Fund Surcharge for Purposes of VOIP Providers

Among the taxes covered in our database is the Georgia Universal Access Fund Surcharge (as captured by Tax Type 26/80). Prior to this month's release, our database reflected that VOIP Providers (as captured by Provider Type 03) were equally required to contribute to this fund based upon their intrastate revenues derived from the sale of 800 Number Type Services (as captured by Group 5008).

However, based upon a recent review of governing legal sources, it is now our fresh interpretation that VOIP providers are actually exempt from having to contribute to this fund based upon their intrastate revenues derived from the sale of 800 Number Type Services.

The basis of this fresh determination is two-fold.

REASON #1
As per the state authorization statute that established the Georgia Universal Access Fund Surcharge, only certificated carriers are required to contribute to this fund. To quote the relevant statutory provision which establishes this fact:

"All **telecommunications companies** holding ***a certificate of authority issued by the commission*** to provide services within Georgia shall contribute quarterly to the fund as provided in this subsection. The commission shall determine the manner of contribution using either one or a combination of the following two contribution methodologies:

(1) A charge for each working telephone number; or

(2) A proportionate amount based on each company's gross intrastate revenues from the provision of **telecommunications services** to end users."[7]

This statutory requirement is likewise reflected in a codified regulation which recites as follows:

"Quarterly Contributions. All **telecommunications companies** holding a certificate of authority issued by the Commission to provide services within Georgia shall contribute quarterly to the Universal Access Fund. The contribution is calculated by multiplying a company's gross intrastate revenues from the provision of telecommunications services to end users by a factor set by order of the Commission."[8]

There is no evidence to suggest that VOIP providers of any kind (i.e., either Fixed or Nomadic) are required to obtain a certificate of authority from the Georgia Public Service Commission. To the contrary, as per one authoritative Georgia Public Service Commission ruling issued in 2009, one provider of retail VOIP service was explicitly identified as being a non-certificated carrier.

To quote the ruling:

"III. Positions of the Parties

A. Comcast

Comcast argues that it is authorized to provide telecommunications services in Georgia, and offers such services; and that therefore, TDS is required to offer interconnection to Comcast under Section 251 of the Federal Act. (Comcast Brief, pp. 5-6).

Comcast reasons that the public will benefit from compelling TDS to interconnect because the interconnected VoIP offered by Comcast IP will increase facilities-based, wireline competition in the residential marketplace. (Comcast Brief, p. 9). Because Comcast IP provides **retail VoIP service**, it needs to "partner" with a wholesale telecommunications carrier in order to use the PSTN.

B. TDS

TDS alleges that Comcast will not be providing telephone service in Camden County. Instead, TDS charges that Comcast IP, **a non-certificated**

[7] Georgia Code § 46-5-167(b).
[8] Georgia Rules and Regulations; Rule 515-12-1-.39(1).

carrier, will provide VoIP service to consumers. TDS asks that this Commission require Comcast IP to obtain certification, and commits that, should that occur, it will interconnect with Comcast"[9]

Nowhere in this decision was there any evidence that the Georgia PSC disputed this characterization, nor is there any evidence to suggest that the Georgia PSC ever acted upon the request by TDS Telecom to require Comcast IP to apply for a certificate of authority.

Meanwhile, the requirement among telecommunication carriers to apply for such a certificate of authority is outlined in a codified statute captioned "Certificates of authority" which recites as follows:

"A **telecommunications company** including a telecommunications services reseller shall not provide telecommunications services without a certificate of authority issued by the commission."[10]

In turn, the term "telecommunications company" is defined as follows:

""Telecommunications company" means any person, firm, partnership, corporation, association, or municipal, county, or local governmental entity offering **telecommunications services** to the public for hire."[11]

In turn, the term "telecommunications services" is defined as follows:

""Telecommunications services" means the services for the transmission of two-way interactive communications to the public for hire. For purposes of illustration, the term "telecommunications services" includes without limitation local exchange services and interconnection services."[12]

Despite the broad scope of these definitions, there is no evidence to suggest that the Georgia PSC has ever applied this statutory framework to VOIP providers.

REASON #2

As per a codified statute, the Georgia PSC is prohibited from regulating VOIP providers. To quote the relevant statutory provision:

"The Public Service Commission shall not have any jurisdiction, right, power, authority, or duty to impose any requirement or regulation relating to the setting of rates or terms and conditions for the offering of broadband service, **VoIP**, or wireless services."[13]

Implicitly, requiring VOIP providers to seek certification would constitute a violation of this statutory prohibition.

Accordingly, based upon the reasons given above, we are hereby modifying our database effective with this month's release to reflect that the Georgia Universal Access Fund Surcharge (as captured by Tax Type 26/80) is not imposed upon VOIP providers (as captured by Provider Type 03) for purposes of Items 001, 003-005, 007, 009 & 010 in Group 5008 (800 Number Service).

[9] See Georgia Public Utilities Commission Order issued under Docket Number 28670 (2009 Ga. PUC LEXIS 260) dated November 2, 2009.
[10] Georgia Code § 46-5-163(a).
[11] Georgia Code § 46-5-162(17).
[12] Georgia Code § 46-5-162(18).
[13] Georgia Code § 46-5-222(a).

Updates to Current Telecommunications Database - System Changes Effective April 2023

Reconfiguration of the New York State Telecommunications Excise Tax as Applied to Sales of Phone Equipment
Among the taxes covered in our database is the New York State Telecommunications Excise Tax. Prior to this month's release, our database reflected that this tax was imposed upon sales of phone equipment (as captured by Items 001 & 002 in Group 5050) at the standard rate of 2.5% (as captured by Tax Type 27/80) for all Provider Types except Provider Type 04 (Internet Service Provider).

However, pursuant to a quality assurance review of governing legal sources, it is now our fresh understanding that wireless carriers (as captured by Provider Type 05) are actually subject to the New York State Telecommunications Excise Tax regarding their sales of phone equipment at the special rate of **2.9%** applicable to mobile telecommunication services (as captured by Tax Type **27/06**).

The basis of this fresh determination is as follows:

As a starting point, the special rate of 2.9% imposed upon mobile telecommunication services for purposes of the New York State Telecommunications Excise Tax is established by a statutory provision that recites as follows:

"There is hereby imposed an excise tax on the sale of **mobile telecommunication services**, by any person which is a provider of telecommunication services, to be paid by such person, at the rate of **two and nine-tenths percent** on and after May first, two thousand fifteen of gross receipts from any **mobile telecommunications service** provided by a home service provider where the mobile telecommunications customer's place of primary use is within this state."[14]

The same statute adds:

"For the purpose of applying the provisions of this section to mobile telecommunications service, the following terms when used in relation to **mobile telecommunications service** shall be defined as such terms are defined in section eleven hundred one of this chapter: "**mobile telecommunications service**," "mobile telecommunications customer," "home service provider," "licensed service area," "reseller," "serving carrier," "place of primary use" and "taxing jurisdiction"."[15]

Meanwhile, as per the referenced statute:

"Receipts from the sale of **mobile telecommunications service** provided by a home service provider shall include "**charges for mobile telecommunications services**." Such term shall mean any charge by a home service provider to its mobile telecommunications customer for (A) commercial mobile radio service, and shall include **property** and services that are ancillary to the provision of commercial mobile radio service (such as dial tone, voice service, directory information, call forwarding, caller-identification and call-waiting), and (B) any service and **property** provided therewith."[16]

The taxable nature of cell phone equipment was further elaborated upon by a letter ruling issued by the New York State Department of Taxation in 2017 which framed the issue under investigation as follows:

"The issue raised is whether the gross receipts from the sales of cellphones by a mobile telecommunications service provider are included in the provider's gross receipts subject to the telecommunication excise tax imposed by Tax Law § 186-e."

As a prelude to answering this question, the letter ruling disclosed the following fact pattern:

"Company X has been in the business of providing wireless telecommunication service in New York for many years, including postpaid plans. Under the traditional postpaid plan, the customer enters into a service contract, generally for two years, to be billed for wireless service on a monthly basis. As a part of such postpaid plan, the customer receives a cellphone from the carrier at no cost or at a discounted price. The carrier recoups the cost of the cellphone through the monthly charge for service under the wireless service contract.

[14] New York Tax Law § 186-e.2(a)(2).
[15] New York Tax Law § 186-e.1(h).
[16] New York Tax Law § 1111(l)(1).

In March 2013, Company X began to offer postpaid wireless service without requiring the customer to enter into a service contract. Rather, customers agree to subscribe for service on a month-to-month basis. Importantly, customers no longer receive a free or reduced price device because the monthly cost of the service purchased does not include any embedded subsidy for the purchase of a cellphone.

By way of example, the customer handset and service process typically works as follows. On a given day, a customer enters Company X's store and seeks to purchase a cellphone and sign-up for postpaid service. The customer would supply Company X with certain information including name and address and Company X would perform a credit check. Assuming the customer has satisfactory credit, no deposit would be required and service could commence on that day. The customer makes no payment until he or she receives the first bill, which is sent out soon after the customer signs up for service. The bill for each month's service thereafter will come out monthly.

With respect to the acquisition of a cellphone, if the postpaid customer purchases a device from Company X and fully pays for the cellphone on the date of purchase, there is no reference to the cellphone purchase on the next service bill. The billing for the cellphone is separated from the billing for the service."

The letter ruling analyzed the application of the law to this fact pattern as follows:

"Tax Law § 186-e(2)(a) imposes an excise tax on the sale of telecommunication services by a provider of telecommunication services on the gross receipt from "mobile telecommunications service provided by a home service provider where the mobile telecommunications customer's place of primary use is within this state." Under section 186-e(1)(g), "telecommunications services" includes any transmission of voice, image, data, information and paging, through microwave, radio wave or satellite, and services that are ancillary to the provision of telephone service and any equipment and services provided therewith." Company X does not dispute that it is a provider of mobile telecommunications services and that it is therefore liable for § 186-e tax on its gross receipt from the sale of mobile telecommunications services. See Tax Law §§ 186-e(1)(h), 1101(b)(24).

Thus, the issue here is whether the charge for the cellphone should be included in § 186-e(1)(a)(1)'s definition of "gross receipt." Company X is the seller of the cellphones in all cases, as it makes outright sales itself, and makes installment sales of the devices through an affiliate that is acting as its agent.

Section 186-e(1)(a)(1) provides that "gross receipt from the sale of mobile telecommunications service provided by a home service provider shall include 'charges for mobile telecommunications service' as described in [Tax Law § 1111(l)(1)], regardless of where the mobile telecommunications service originates, terminates or passes through."

Tax Law § 1111(l)(1) defines "charges for a mobile telecommunications service" as "any charge by a home service provider to its mobile telecommunications customer for (A) commercial mobile radio service, and shall include property and services that are ancillary to the provision of commercial mobile radio service (such as dial tone, voice service, directory information, call forwarding, caller-identification and call-waiting), and (B) any service and property provided therewith." The property and services described in subparagraph (B) of § 1111(l)(1), but not the property and services described in subparagraph (A) of § 1111(l)(1), are subject to the disaggregation rules in § 186-e(2)(b)(4). The latter provision states that a carrier that is selling subparagraph (B) property and services along with mobile telecommunications service for one price may, under certain circumstances, <u>exclude</u> from the tax on mobile telecommunications services a portion of that total charge as attributable to the subparagraph (B) property, using the disaggregation rules set forth therein.

The cross reference in Tax Law § 186-e(1)(a)(1) to "charges for a mobile telecommunications service" in § 1111(1)(1) has the effect of separating the gross receipts received by a mobile telecommunication service provider into two categories. Subparagraph (A) of § 1111(l)(1) includes property and services that are integrally related to the provision of mobile telecommunication services, such as dial tone services, call forwarding, and property that is similarly integral to the mobile telecommunications service and thus part of the § 186-e tax base. [See TSB-M95(3)C listing as "ancillary" and thus taxable under § 186-e "directory information, call forwarding, caller identification and call-waiting and supplementary services," along with "equipment provided in connection with the provision of any telecommunications service (e.g., beepers, telephones, fax machines, modems, equipment used for data transmission, etc.")].

These charges, being integral to the telecommunication process, are <u>not</u> made subject to the disaggregation rule in § 186-e(2)(b)(4) and, thus, are **<u>taxable</u>** as mobile telecommunications services under all circumstances.

This understanding of the intended scope of § 186-e(2)(b)(4) leads us to the conclusion that its disaggregation rules do <u>not</u> apply to Petitioner's separate charges for its cellphones.

Under the facts here, it is apparent that a customer purchases a cellphone from Company X in order to use it on Company X's network. Accordingly, the cellphones are "ancillary" to Company X's mobile telecommunications service and thus qualify as subparagraph (A) property for purposes of Tax Law § 1111(l)(1). Because the cellphones are subparagraph (A) property, the disaggregation rules in § 186-e(2)(b)(4) do not apply to Petitioner's sales of cellphones.

Therefore, Company X's separate charges for the cellphones are **subject** to § 186-e tax."[17]

The conclusion reached by this letter ruling regarding the taxable nature of phone equipment sold by a mobile telecommunication service provider is likewise incorporated into the remittance form for the New York State Telecommunications Excise Tax. Specifically, "Equipment provided in connection with mobile telecommunication services" represents a separate line item that is included within the tax base of the "New York State excise tax on mobile telecommunication services ***subject to [the] 2.9% tax rate*** [Tax Law section 186-e(2)(a)(2)]."[18]

Accordingly, we are hereby reconfiguring our database effective with this month's release to reflect that charges for equipment sold in connection with mobile telecommunication service (as captured by Items 001 & 002 in Group 5050) are subject to the New York State Telecommunications Excise Tax at the special 2.9% rate imposed upon mobile telecommunication service (as captured by Tax Type **27/06**).

Please note, however, that this tax rate shall only apply to our database users that routinely map to Provider Type 05 (Wireless carriers) given that this special 2.9% rate is exclusively associated with the provision of mobile telecommunication service.

Reconfiguration of the New York State Telecommunications Excise Tax – MTA Surcharge as Applied to Sales of Phone Equipment
Among the taxes covered in our database is the New York State Telecommunications Excise Tax – MTA Surcharge. Prior to this month's release, our database reflected that this tax was imposed upon sales of phone equipment (as captured by Items 001 & 002 in Group 5050) at the standard rate of 0.595%% (as captured by Tax Type 17/80) for all Provider Types except Provider Type 04 (Internet Service Provider).

However, pursuant to a quality assurance review of governing legal sources, it is now our fresh understanding that wireless carriers (as captured by Provider Type 05) are actually subject to the New York State Telecommunications Excise Tax – MTA Surcharge regarding their sales of phone equipment at the special rate of **0.721%** applicable to mobile telecommunication services (as captured by Tax Type **17/06**).

The basis of this fresh determination is as follows:

As a starting point, the special rate of 0.721% imposed upon mobile telecommunication services for purposes of the New York State Telecommunications Excise Tax MTA Surcharge is established by a statutory provision that recites as follows:

"In addition to the surcharge imposed by paragraph (a) of this subdivision, there is hereby imposed a surcharge on the gross receipts from **mobile telecommunication services** relating to the metropolitan commuter transportation district at the rate of seven-tenths and two-hundredths and one-thousandth percent on and after May first, two thousand fifteen".

The same provision adds:

"***All the definitions and other provisions of section 186-e of this article shall apply to the tax imposed by this subparagraph with such modification and limitation as may be necessary in order to adapt the language of such section 186-e of this article to the surcharge imposed by this subparagraph within such metropolitan commuter transportation district so as to include any mobile telecommunications service provided by a home service provider where the mobile telecommunications customer's place of primary use is within such metropolitan commuter transportation district.***"[19]

The clear-cut implication of this latter provision is that the New York State Telecommunications Excise Tax and the New York State Telecommunications Excise Tax MTA Surcharge share the same taxability rules as applied to phone equipment sold in conjunction with mobile telecommunication service.

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[17] NYT-G-17(1)C: "Application of Telecommunication Excise Tax to the Separate Charge for a Cell Phone Sold by a Mobile Telecommunications Service Provider" (2017 N.Y. Tax LEXIS 7) [Released April 17, 2017].
[18] Form CT-186-E; Line 107.
[19] New York Tax Law § 186-c.1(b)(2).

This 1:1 correlation is likewise incorporated into the remittance form for the New York State Telecommunications Excise Tax whereby "Equipment provided in connection with telecommunication services" represents a separate line item that is included within the tax base of the "MTA surcharge related to mobile telecommunication service ***subject to [the] 0.721% tax rate*** [Tax Law section 186-c(1)(b)(2)]."[20]

Accordingly, we are hereby reconfiguring our database effective with this month's release to reflect that charges for equipment sold in connection with mobile telecommunication service (as captured by Items 001 & 002 in Group 5050) are subject to the New York State Telecommunications Excise Tax MTA Surcharge at the special 0.721% rate imposed upon mobile telecommunication service (as captured by Tax Type **17/06**).

Please note, however, that this tax rate shall only apply to our database users that routinely map to Provider Type 05 (Wireless carriers) given that this special 0.721% rate is exclusively associated with the provision of mobile telecommunication service.

Texas Local Sales & Use Tax: One Additional Local Jurisdiction Now Taxes Telecommunications Service

Effective April 1, 2023, the following additional local jurisdiction in Texas will now impose its local option sales & use tax on telecommunication services: City of Poetry (in Hunt and Kaufman Counties) - captured in the database by Tax Types 04/80 & U4/80.[21]

[20] Form CT-186-E; Line 124.
[21] See https://comptroller.texas.gov/taxes/publications/96-339.php.