

Telecommunications Sales Tax Rates and Taxability

Welcome to the Telecommunications Database

This bulletin provides important information about the August 2022 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>.

System Changes Effective August 2022

Update to Maine Public Advocate Assessment Rate on the Telecommunications Database

Among the taxes covered in our database is the Maine Public Advocate Assessment (as captured by Tax Type 19/80).

To quote the statutory provision that gives rise to this supplemental assessment:

"Public Advocate assessment.

Every utility or qualified telecommunications provider subject to assessment under this section is subject to an additional annual assessment on its intrastate gross operating revenues to produce sufficient revenue for expenditures allocated by the Legislature for operating the Office of the Public Advocate. The portion of this assessment applicable to each category of public utility or qualified telecommunications provider is based on an accounting by the Public Advocate of resources devoted to matters related to each category.

The Public Advocate shall develop a reasonable and practicable method of accounting for resources devoted by the Public Advocate to matters related to each category of public utility or qualified telecommunications provider. Assessments on each public utility or qualified telecommunications provider within each category must be based on the utility's or qualified telecommunications provider's gross intrastate operating revenues.

Within each category of public utility, the assessment must be apportioned and applied separately to investor-owned utilities and consumer-owned utilities. The portion of the assessment applicable to investor-owned utilities and to consumer-owned utilities within each category must be determined based on an accounting by the Public Advocate of the portion of the resources of the Office of the Public Advocate devoted to matters related to investor-owned utilities and the portion devoted to matters related to consumer-owned utilities."¹

For the last couple of years, we have been capturing this assessment on our database via a "bucket" rate, i.e., with a zero rate. The reason for this was that for the last couple of years, the administrator for this assessment, the Maine Public Advocate Office, chose not to disclose to us the exact percentage rate for this assessment. However, the Maine Public Advocate Office recently decided to once again release to us the exact percentage rate for this assessment (for the 2023 Fiscal year), which is 0.001577 (0.1577%).

Therefore, we are hereby updating our database for the August 1st release, to replace the "bucket" rate with the actual assessment rate for the Maine Public Advocate Assessment fee (as captured by Tax Type 19/80).

1 - 35-A Maine Revised Statutes § 116[8].

Reconfiguration of the Hawaii General Excise Tax

Among the taxes covered in our database is the Hawaii General Excise Tax (GET). The Hawaii GET is a provider-based Gross Receipts Tax (as captured by Base Type '01' = Seller - Gross Receipts) that is levied upon a variety of business occupations. Prior to this month's release, this tax was captured in our database by a single Tax Type & Tax Cat combination on both the state and county level - namely Tax Types 01/01 & 02/01, respectively.

The basis of this single Tax Type & Tax Cat combination was the fact that for each of the primary business classifications applicable to our database (i.e., retailing and telecommunications), the rates of tax are identical - i.e., 4% on the state level and 0.5% on the county level.

To quote the applicable statutory provisions which establishes this uniform 4% rate:

"There is hereby levied and shall be assessed and collected annually privilege taxes against persons on account of their business and other activities in the State measured by the application of rates against values of products, gross proceeds of sales, or gross income, whichever is specified, as follows:

Tax on business of selling **tangible personal property**

Upon every person engaging or continuing in the business of selling any tangible personal property whatsoever, there is likewise hereby levied, and shall be assessed and collected, a tax equivalent to **four per cent** of the gross proceeds of sales of the business; etc."²

A separate set of statutory provisions recite as follows:

"Tax on **service business**

Upon every person engaging or continuing within the State in any service business or calling including professional services not otherwise specifically taxed under this chapter, there is likewise hereby levied and shall be assessed and collected a tax equal to **four per cent** of the gross income of the business, etc.³

Where any person is engaged in the business of selling **interstate** or **foreign common carrier telecommunication services** within and without the State, other than as a home service provider, the tax shall be imposed on that portion of gross income received by a person from service which is originated or terminated in this State and is charged to a telephone number, customer, or account in this State notwithstanding any other state law (except for the exemption under section 237- 23(a)(1)) to the contrary.⁴

Where any person is engaged in the business of a home service provider, the tax shall be imposed on the gross income received or derived from providing **interstate** or **foreign mobile telecommunications services** to a customer with a place of primary use in this State when the services originate in one state and terminate in another state, territory, or foreign country; provided that all charges for **mobile telecommunications services** which are billed by or for the home service provider are deemed to be provided by the home service provider at the customer's place of primary use, regardless of where the **mobile telecommunications** originate, terminate, or pass through."⁵

2 - Hawaii Revised Statutes § 237-13(2)(A).

3 - Hawaii Revised Statutes § 237-13(6)(A).

4 - Hawaii Revised Statutes § 237-13(6)(C).

5 - Hawaii Revised Statutes § 237-13(6)(D).

Please note that although from a purely programmatic standpoint, the determination of our tax team to capture the Hawaii GET via a single Tax Type & Tax Cat combination of 01/01 & 02/01 is both technically correct and consistent with our longstanding policy of applying single Tax Type & Tax Cat combination to diverse transactional categories (such as general merchandise and telecommunication service), it is come to our attention that such a practice is not entirely compatible with the reporting form utilized by the Hawaii Department of Taxation.

More specifically, the lack of such a 1:1 correlation is attributable to the fact that income derived from the "Retailing" classification is reported on Line 8 of Form G-45 (i.e., the General Excise Tax Return) while income derived from the "Services" classification is reported on Line 9 of that same form.

Therefore, as an enhancement to our database that is designed to enable revenues derived from the sale of tangible personal property versus revenues derived from the sale of landline and mobile telecommunications service to easily flow through to the correct Line number of the Hawaii GET reporting form, we are hereby breaking out a brand new set of Tax Type & Tax Cat combinations of **01/80** and **02/80** effective with this month's release in order to reflect this subtle distinction.

Accordingly, on a going-forward basis, the following Tax Type & Tax Cat combinations shall apply on a Group & Item level in Hawaii:

* The original Tax Type & Tax Cat combinations of 01/01 and 02/01 shall continue to apply to tangible personal property related sales (such as Group 0000 = General Merchandise).

* The new Tax Type & Tax Cat combinations of 01/80 and 02/80 shall now apply to telecommunications related sales (such as Group 5000 = Long Distance Toll Service).

NOTE: Sales of prepaid telephone service shall continue to be captured by Tax Types 01/01 & 02/01 given the fact that as per the governing statutory provision such sales are classified as a form of tangible personal property.

To quote the relevant statutory provision that establishes this rule:

"When a person licensed under this chapter sells **prepaid telephone calling services** to a licensed retail merchant, jobber, or other licensed seller for purposes of resale, the person shall be taxed as a wholesaler selling tangible personal property.

All other sales of **prepaid telephone calling services** shall be taxed as retail sales of **tangible personal property**."⁶

Reconfiguration of the Kentucky Rate Increase for School Tax & Rate Increase for School Use Tax

Among the taxes covered in our database are the Kentucky Rate Increase for School Tax and Rate Increase for School Use Tax (hereinafter the "School Tax"). The Kentucky School Tax is a provider-based Gross Receipts Tax (as captured by Base Type '01' = Seller - Gross Receipts) that is imposed by school districts on both the county and local level. The tax is levied upon a variety of utility services including both communication services and cable services, and by extension, Internet Protocol Television Service (IPTV) [See Explanatory Note below].

Prior to this month's release, these taxes were captured in our database by a single Tax Type & Tax Cat combination of 32/80 (and UJ/80 in the case of the Use Tax), reflecting the fact that where imposed upon both communication services and cable services, the rate of tax is the same (typically 3% of gross receipts).

To quote the statute that authorizes school districts in the state to impose a gross receipts tax upon providers of communication services:

"There is hereby authorized a utility gross receipts license tax for schools not to exceed three percent (3%) of the gross receipts derived from the furnishing, within the district, of **utility services**, etc."⁷

6 - Hawaii Revised Statutes § 237-13.8(c).

7 - Kentucky Revised Statutes § 160.613(1).

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

""**Utility services**" means the furnishing of **communications services**, electric power, water, and natural, artificial, and mixed gas."8

Meanwhile, the statute that authorizes school districts to impose a gross receipts tax upon providers of cable services recites as follows:

"(1) A utility gross receipts license tax initially levied by a school district board of education on or after July 13, 1990, shall be levied on the gross receipts derived from the furnishing of **cable service** in addition to the gross receipts derived from the furnishing of the utility services defined in [KRS 160.6131](#).

(2) A utility gross receipts license tax initially levied by a school district board of education prior to July 13, 1990, shall be levied on the gross receipts derived from the furnishing of **cable service**, in addition to the gross receipts derived from the furnishing of the utility services defined in [KRS 160.6131](#), if the school district board of education repeats the notice and hearing requirements of [KRS 160.603](#), but only as to the levy of the tax on the gross receipts derived from the furnishing of **cable service**."9

This dual-set of statutory provisions illustrates the fact that the imposition of the Kentucky School Tax upon cable services is not automatic. Rather, various conditions - either relating to the chronologic date on which the tax was enacted, or alternatively, compliance with various notice and procedural requirements - must be satisfied first.

As the de facto administrator of the School Tax, the Kentucky Department of Revenue publishes a table on its website listing the various School Districts that impose this utility gross receipts tax while dividing that tabular list into two columns "Utility Rate" versus "Cable Rate".

In some instances, the rate of tax for "Utilities" is listed as a positive rate (typically 3%) while the rate of tax for "Cable" is listed as 0.00%.

Upon careful consideration, it is now the firm opinion of our editorial team that the more accurate way to display the Kentucky School Tax in our database is through a separate set of rates for communication services (which shall continue to be captured via Tax Types 32/80 & UJ/80) versus cable TV service (which on a going-forward basis shall now be captured by Tax Types 32/45 & UJ/45). This enhancement will thereby allow us to more clearly flag those districts in which cable service is "zero-rated".

As per the Kentucky DOR rate matrix, our database shall now display a 0% rate for cable service (as captured by Tax Types 32/45 & UJ/45):

1. Anderson County
2. Butler County
3. Carroll County
4. Estill County
5. Fleming County
6. Gallatin County
7. Livingston County
8. McCracken County
9. Pulaski County
10. Simpson County

8 - Kentucky Revised Statutes § 160.6131(5).

9 - Kentucky Revised Statutes § 160.614.

11. Spencer County
12. Warren County
13. Bowling Green Independent School District
14. Jenkins Independent School District
15. Middlesboro Independent School District
16. Williamsburg Independent School District

Please note that on a state-default level Tax Types 32/45 and UJ/45 in Kentucky shall apply to Group 5031 (Cable Services) on the Group-Level in addition to Product Group, Product Item (PGPI) 5048/001 (Internet Protocol TV Services).

NOTE: The equivalency of Cable TV Service and Internet Protocol TV Service in terms of both rate and taxability status is derived from a statutory provision that recites as follows:

"Any school district board of education that has **cable service** and direct satellite broadcast and wireless cable service included in the base of a utility gross receipts tax levied prior to July 1, 2009, shall, as of July 1, 2009, include gross receipts derived from the furnishing of **Internet protocol television service** provided through wireline facilities without regard to delivery technology, in the base of its utility gross receipts tax at the **same rate** as applied to **cable service** and direct satellite broadcast and wireless cable service."¹⁰

Updates to Current Telecommunications Database - Taxability Changes Effective August 2022

Change to the Taxability Status of Streaming Video Service for Purposes of the Kentucky Rate Increase for School Tax & Rate Increase for School Use Tax

Prior to this month's release, our database reflected that charges for Streaming Video as captured by Items 002-004 in Group 5048 (Video Services) were subject to of the Kentucky Rate Increase for School Tax (as captured by Tax Type 32/80) and the Rate Increase for School Use Tax (as captured by Tax Type UJ/45) on the state level. However, based upon a quality assurance review of governing legal sources, it is now our fresh understanding that such charges are only subject to taxability for purpose of these taxes in a very finite number of districts.

This fresh understanding is based upon the following sequence of statutory provisions:

As per the amended statutory provision which extends the Kentucky School Tax to newer video programming technologies:

"A utility gross receipts license tax initially levied by a school district board of education **on or after July 1, 2009**, shall include the gross receipts derived from the furnishing of **multichannel video programming service** in addition to the gross receipts derived from the furnishing of utility services."¹¹

In turn, the corresponding definitions statute declares as follows:

"**"Multichannel video programming service"** has the same meaning as in KRS 136.602."¹²

As per the referenced statute:

10 - Kentucky Revised Statutes § 160.614(7).

11 - Kentucky Revised Statutes § 160.614(6).

12 - Kentucky Revised Statutes § 160.6131(9).

"Multichannel video programming service" means live, scheduled, or on-demand programming provided by or generally considered comparable to or in competition with programming provided by a television broadcast station and shall include but not be limited to: (a) Cable service; (b) Satellite broadcast and wireless cable service; (c) Internet protocol television provided through wireline facilities without regard to delivery technology; and (d) **Video streaming services.**"¹³

Read collectively, it is our seasoned interpretation that charges for video streaming service are only subject to the Kentucky Rate Increase for School Tax and Rate Increase for School Use Tax if those taxes were originally enacted ON OR AFTER July 1, 2009.

Please note that a very finite number of School District Taxes in Kentucky were initially levied after this cut-off date thereby allowing such districts to satisfy the date-specific condition quoted above.

Accordingly, based upon our thorough quality assurance study of the various Kentucky School District Taxes, factoring in the exact date upon which such taxes were originally enacted, we are hereby modifying our database effective with this month's release to reflect that the Kentucky Rate Increase for School Tax (as captured by Tax Type 32/80) and the Rate Increase for School Use Tax (as captured by Tax Type UJ/45) are imposed upon charges for streaming video (as captured by Items 002-004 in Group 5048) only in the following districts:

- Fairview Independent School District
- Jackson County
- Southgate Independent School District

Please note that the inclusion of "video streaming services" within the definition of "Multichannel video programming service" was a fairly recent amendment to the Kentucky statutory code; having been introduced by legislation enacted in the year 2019. [FOOTNOTE 14]

Change to the Taxability Status of Telecommunications Services for Purposes of the Brawley, CA Utility Users Tax

Over the last few years, a consistently growing number of cities throughout California, via ordinances and voter approved referendums, have been imposing a newly revised Utility User Tax (covered in the database by Tax Type 16), or often now commonly referred to as a "Communications User Tax". To a large extent, the purpose of these newly revised Utility User Tax ordinances is to expand the taxable base of the Utility User Tax and to clarify that the taxable base of the Utility User Tax is no longer tied to the taxable base of the Federal Excise Tax, especially in light of the 2006 IRS ruling which exempts long-distance telephone and cellular services from tax collection liability.

The practical implication of these newly revised Utility User Tax ordinances is that most (if not all – depending on the specific version of the ordinance approved by the voters) of the following telecommunications services will now be subject to the tax:

- * Intrastate
- * Interstate
- * International
- * Paging (covered by Groups 5003 & 5004)
- * Cellular (covered by Groups 5006, 5025 & 5026)
- * 800-toll free services (covered by Group 5008)
- * Voice mail services (covered by Group 5007)

13 - Kentucky Revised Statutes § 136.602(8).

14 - See Kentucky House Bill 354 (2019).

- * Directory assistance (covered by Group 5013)
- * Landline data services (covered by Groups 5020 & 5021)
- * Wireless data services (covered by Groups 5029 & 5030)
- * Private communications services (covered by Groups 5023 & 5024)
- * Detailed billing/invoice fee (covered by Group 5033, item 003)
- * Text messaging (covered by Group 5037, item 007)
- * VOIP (covered by Groups 5032, 5041 & 5044)
- * 900-number information services (covered by Group 5005)
- * Teleconferencing services (covered by Group 5022)

It is also important to note that generally, all cities that have in the past imposed their utility user taxes on cable television services (covered by Group 5031) will continue to tax these services under the new utility user tax/communications user tax ordinances.

The following is a list of the additional cities that have begun imposing their revised Utility User Tax and which have now been entered into the database with this August 1st release:

- * Brawley

To quote the amended provisions of the city's code which establish this expanded tax base:

"There is hereby imposed a tax upon every person in the city using **communications services, video programming, video services, VoIP**, or any other service subject to this article. The tax imposed by this section shall be at the rate of four percent of the charges made for such services and shall be collected from the service user by the **communication services supplier** or its billing agent."¹⁵

In turn, the term "communications service" is defined as "the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whatever the technology used."

The term "**telecommunications services**" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data services that are functionally integrated with "telecommunication services" and any other technologies which may subsequently develop not prohibited from taxation by either the laws of the state of California or the United States.

"**Communications services**" include, but are not limited to the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunication services; intrastate, interstate, and international telecommunication services; mobile telecommunications service; prepaid telecommunication service; post-paid telecommunication service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); 900 service (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers who call in to pre-recorded or live service)."¹⁶

15 - Brawley, CA Municipal Code § 24.83(a).

16 - Brawley, CA Municipal Code § 24.81[15].

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