

Telecommunications Sales Tax Rates and Taxability

Welcome to the Telecommunications Database

This bulletin provides important information about the August 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>.

Updates to Current Telecommunications Database - Taxability Changes Effective August 2023

Change to the Taxability Status of Payphone Access Lines for Purposes of the Alaska Universal Service Fund

Among the taxes covered in our database is the Alaska Universal Service Fund (as captured by Tax Type 26/80).

Prior to this month's release, our database reflected that charges for payphone access lines (as captured by Group & Item code 5038/001) were not subject to the Alaska USF. However, pursuant to a review of governing legal sources, it is now our fresh interpretation that the Alaska USF is imposed upon charges for payphone access lines.

The basis of this fresh interpretation is as follows:

As per the governing regulation which establishes the revenue base of the Alaska USF:

"A public utility that provides intrastate telecommunications service to the public, or to those classes of users as to be effectively available to the public for a fee, shall pay a universal service surcharge to the AUSF. The public utility must pay the surcharge on its annual gross revenues that are generated from end users on the following intrastate telecommunications services and charges: **pay phone services**."¹

Meanwhile, among the Line Items listed on the Alaska USF Remittance Worksheet is a category for "Pay Telephone Revenues".²

As per the accompanying Worksheet Instructions, "Line 5 – Pay Telephone Revenues" includes intrastate revenues derived from public and semi-public telephone services."³

Based upon this linkage, effective with this month's release we are now modifying our database to reflect that charges for payphone access lines (as captured by Group & Item code 5038/001) are included within the revenue base of the Alaska Universal Service Fund (as captured by Tax Type 26/80).

Change to the Taxability Status of Prepaid Phone Service Sold on a Wholesale Level for Purposes of the Alaska Universal Service Fund

Prior to this month's release, our database reflected that revenues derived from prepaid phone service sold on a wholesale level as captured by Group 5035 (Cellular Prepaid Service) and Group 5039 (Wireline Prepaid Service) were subject to the Alaska USF.

However, pursuant to a review of governing legal sources, it is now our fresh interpretation that such revenues are actually exempt from the Alaska USF based upon the following line of reasoning:

¹ 3 Alaska Administrative Code § 53.340(a)(16).

² Alaska USF Carrier Remittance Worksheet; Line 5.

³ Monthly Carrier Remittance Worksheet Instructions (2022); Page 8.

As per the Alaska USF Remittance Worksheet Instructions:

“Line 3 – Wireless/PCS/Mobile/Paging Revenues includes intrastate charges such as ... **end user prepaid wireless charges** ... and all other wireless telecommunications revenues.”⁴

As per that same document:

“Wholesale transactions between carriers, including access charges, interconnection charges, and billing and collection charges are exempt from the AUSF surcharge because they are not end-user revenues.”

Based upon this distinction, revenues derived from Cellular Prepaid Service sold on a wholesale level are explicitly exempt from the Alaska USF. The same rationale would apply to Wireline Prepaid Service sold on a wholesale level.

Accordingly, effective with this month’s release we are now modifying our database to reflect that Group 5035 (Cellular Prepaid Service) and Group 5039 (Wireline Prepaid Service) are exempt from the Alaska USF (as captured by Tax Type 26/80) on a Group-level.

Change to the Taxability Status of Voice Mail Service for Purposes of the Nebraska Universal Service Fund

Among the taxes covered in our database is the Nebraska Universal Service Fund. Prior to this month’s release, our database reflected that charges for voice mail service (as captured by Group 5007) were subject to this assessment on a Group-level at the percentage-based rate of 6.95% (as captured by Tax Type 26/03). However, pursuant to a review of governing legal sources, it is now our fresh interpretation that charges for voice mail service are actually excluded from the revenue base of the Nebraska Universal Service Fund.

The basis of this fresh interpretation is as follows:

The remittance form for the Nebraska Universal Service Fund is now filed electronically. However, prior to the conversion to an online filing system, a hardcopy version of such remittance form was available online. As per that form, carriers were required to associate their in-state revenues with various revenue categories that were described in more granular detail inside an accompanying online Instruction Guide. A review of that Instruction Guide implicitly suggests that voice mail service could theoretically fit into only one such revenue category which is labeled “Line 3 – Other Fixed Local Service Revenue”.

To quote the instructions to Line 3:

“Line 3 - Other Fixed Local Service Revenue

Other local telecommunications service revenues should include some revenues contained in Account 5200 -- Miscellaneous revenue—as well as other local telecommunications service revenues that reasonably would not be included with one of the other local service revenue categories. [This line] should exclude: **enhanced services**; billing and collection; customer premises equipment sale, lease or insurance; published directory revenues; and any **non-telecommunications revenues**.⁵

It is well established that most state universal service funds mirror the Federal Universal Service Fund (FUSF) regarding the assessment status of various sources of revenue. For purposes of the FUSF, “non-telecommunications revenues” including revenues derived from the sale of information services are reported on Line 418. To quote the FUSF Instruction Guide:

“Line 418 should include all **non-telecommunications service revenues** on the filer’s books, including non-telecommunications service revenues received from contributing resellers, as well as some revenues that are derived from telecommunications-related functions, but that should not be included in the universal service or other fund contribution bases.

Line 418 includes revenues from:

- Information services offering a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications are not included in the universal service or other fund contribution bases. For example,

⁴ Monthly Carrier Remittance Worksheet Instructions (2022); Page 8.

⁵ Nebraska Universal Service Fund On-Line Remittance Worksheet Instructions – Revenue and Assessment Data.

wireless text messaging services including Short Message Service (SMS) and Multimedia Messaging Service (MMS), **voice mail**, call moderation, and call transcription services are **information services**.⁶

Meanwhile, a footnote contained in an FCC Order published in 1992 clearly established that voice mail service was – at the time – classified by the FCC as an “enhanced service”.

To quote the document:

“Contrary to the assertion of some commenters, the Ninth Circuit did not hold that **voice mail service** is a purely intrastate enhanced service. California v. FCC, 905 F.2d 1217, 1244 (9th Cir. 1990). The issue of whether any particular **enhanced service, including voice mail**, was purely intrastate was not specifically before the Court nor was any record developed on any particular **enhanced service**.⁷

Based upon this linkage, we are modifying our database effective with this month’s release to reflect that charges for voice mail service (as captured by Group 5007) are excluded from the tax base of the Nebraska Universal Service Fund (as captured by Tax Type 26/03).

Updates to Current Telecommunications Database - System Changes Effective August 2023

Reconfiguration of the Alaska Universal Service Fund Surcharge for Purposes of Voice over Internet Protocol

Among the taxes covered in our database is the Alaska Universal Service Fund Surcharge (USF). Prior to this month’s release, our database reflected that the Alaska USF was imposed upon Group 5032 (Fixed VOIP) & Group 5044 (Nomadic VOIP) based upon the standard rate of assessment (as captured by Tax Type 26/80) on the Group-level with the exception of various Items such as Items 004, 008 & 009.

The affirmative assessment status of VOIP carriers is based upon a regulation that recites as follows:

“A public utility that provides intrastate telecommunications service to the public, or to those classes of users as to be effectively available to the public for a fee, shall pay a universal service surcharge to the AUSF.

The public utility must pay the surcharge on its annual gross revenues that are generated from end users on the following intrastate telecommunications services and charges: ... interconnected Voice over Internet Protocol (VoIP).⁸

However, pursuant to a quality assurance review of governing legal sources, it is now our fresh understanding that VOIP carriers are permitted to measure their contribution based upon the inverse FCC safe harbor ratio for Interstate VOIP telecommunication revenues.

To quote the Order published by the Alaska Regulatory Commission in 2016 which establishes this fact:

“On June 21, 2006, the FCC ordered providers of interconnected VoIP services to contribute to the federal universal service fund (USF). On October 28, 2010, in a declaratory ruling the FCC allowed states to extend their universal service contribution base to include the intrastate revenues of VoIP service providers. Citing this federal precedent, GCI petitioned us to amend 3 AAC 53.340(a) to add the interconnected VoIP service to the list of services subject to the AUSF surcharge.

We adopt 3 AAC 53.340(a)(19) as attached in the appendix to this order and expand the contribution base of the AUSF to include VoIP service. We adopt, by cross-reference, the federal definition of VoIP. The FCC defines interconnected VoIP service as a service that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user’s location; (3) requires Internet protocol-compatible customer premises equipment; and (4) permits users generally to receive calls that originate on the PSTN and to terminate calls to the PSTN. See 47 C.F.R. § 9.3. In addition to incorporating the VoIP service to the list of services subject to the AUSF surcharge and adopting the federal definition of VoIP service, we adopt in this order several procedural instructions.

⁶ FCC Form 499-A Worksheet Instructions (2023); Page 34.

⁷ “In the Matter of Petition for Emergency Relief and Declaratory Ruling Filed by the BellSouth Corporation” FCC Order 92-18 [1992 FCC LEXIS 2915]; Note 33.

⁸ 3 Alaska Administrative Code § 53.340(a)(19).

Specifically, we instruct VoIP providers to use the same methodology to determine the revenues subject to the state USF assessment that they use to determine the appropriate jurisdictional split of revenues for federal USF contribution purposes (i.e., **safe harbor rule calculation**, the development of a traffic study, or the actual revenue allocations between interstate and intrastate calls).⁹

Based upon these clear-cut instructions, we are hereby adjusting our database effective with this month's release, to reflect that a Percent Taxable value of 35.1% (i.e., the inverse FCC Safe Harbor Ratio for Intrastate VOIP revenues) applies to the following Group & Item codes in the database:

- Group 5032 (Fixed VOIP); Items 001-005, 010, 012-015, 018, 021 & 023
- Group 5041 (Wireless VOIP); Group-Level
- Group 5044 (Nomadic VOIP); Items 001-005, 010, 012-015, 018, 021 & 023

Please note that Items 006 & 007 in Groups 5032 & 5044 (which represent usage-based charges for Intrastate VOIP calls) will continue to be subject to the standard rate of the Alaska USF (as captured by a Percent Taxable value of 100%).

Changes to the Tax-on-Tax Rules Associated with Colorado Sales & Use Tax

Among the taxes covered in our database is Colorado State & Local Sales & Use Tax (as captured by Tax Types 01/01, 02/01, 03/01, 04/01, 04/80, 05/01, U1/01, U2/01, U3/01, U4/01 & U5/01). Prior to this month's release, our database reflected that the following surcharges were included in the base of Colorado Sales Tax for the purpose of the calculation of Tax-on-Tax:

- Colorado Telecommunications Relay Services Surcharge (Tax Type 09/80)
- Colorado Universal Service Fund (Tax Type 26/80)
- Colorado Local 911 Surcharge (Tax Type 33/80)
- Federal Universal Service Fund (Tax Type 35/80)
- Federal Cost Recovery Charge (Tax Type 60/80)
- Federal Cost Recovery Fee (Tax Type 60/28)

However, pursuant to a quality assurance review of governing legal sources, it is now our fresh understanding that none of these fees are included within the tax base of Colorado Sales Tax for the purpose of the calculation of Tax-on-Tax.

To quote the Colorado Department of Revenue tax bulletin which this fresh understanding is based upon:

"A bill for telephone service may also include certain governmental surcharges. The following surcharges, which may appear on a bill for telephone service, are not subject to Colorado sales tax:

- 911 charges and surcharges
- 988 charges and surcharges
- Telecommunications Relay Services (TRS) surcharges
- Universal Services Fund (USF) surcharges"¹⁰

⁹ Regulatory Commission of Alaska Order R-15-007; Order Number 3 (Released November 30, 2016) [2016 Alas.PUC LEXIS].

¹⁰ Sales & Use Tax Topics: Telecommunications (Revised May 2023).

Based upon these published instructions, we are hereby modifying our database effective with this month's release to reflect that all of the surcharges enumerated above are excluded from the tax base of Colorado State & Local Sales Tax (as captured by Tax Types 01/01, 02/01, 03/01, 04/01, 04/80, 05/01, U1/01, U2/01, U3/01, U4/01 & U5/01) for the purpose of the calculation of Tax-on-Tax.

Rate Correction for the San Francisco 911 Surcharge

Among the taxes covered in our database is the San Francisco 911 Surcharge (as captured by Tax Type '33'). In our July 1st database release, we updated the San Francisco 911 Surcharge rates as follows:

- TaxType/TaxCat 33/80 – Standard Access Line Rate – Increased surcharge rate to \$4.15 per month.
- TaxType/TaxCat 33/24 – Trunk Line Rate – Increased surcharge rate to \$31.24 per month.
- TaxType/TaxCat 33/56 – High-Capacity Trunk Line Rate – Increased surcharge rate to \$562.50 per month.

These rate changes were based on a proposed rate adjustment table released by San Francisco. However, we have become aware that these proposed rate changes were delayed, and not yet approved by the San Francisco City Board. These rate changes are currently slated to be discussed and approved at the San Francisco City Board meeting on August 2, 2023.

This means the new updated rates will not be going into effect until at least after August 2nd, and possibly not until a significant period afterwards as any approval by the City Board will also need to wait for the City Tax Collector to adjust the surcharge rates in their system, and notify taxpayers of the new adjusted surcharge rates.

Therefore, effective with this August 1st database release, we are reinstating the original San Francisco 911 Surcharge rates as they existed on our database prior to the July 1st database release as follows:

- TaxType/TaxCat 33/80 – Standard Access Line Rate – \$3.96 per month.
- TaxType/TaxCat 33/24 – Trunk Line Rate – \$29.79 per month.
- TaxType/TaxCat 33/56 – High-Capacity Trunk Line Rate – \$536.32 per month.

Reconfiguration of the Chicago, Illinois 911 Surcharge Imposed Upon Centrex Lines

Among the taxes covered in our database is the Chicago, Illinois 911 Surcharge. Prior to this month's release, our database reflected that the rate for this surcharge (as captured by Tax Type 33/35), as applied to Centrex Lines (as captured by Group & Item code 5002/012) was equal to \$25.00 per month *per access line* (as captured by Unit Type code '00'). However, pursuant to a quality assurance review of provisions contained in the Chicago Municipal Code, it is now our fresh interpretation that the Chicago, Illinois 911 Surcharge – as levied upon Centrex systems – is actually imposed on a "per trunk" basis (as captured by Unit Type code '20').

The basis of this fresh understanding is as follows:

As per the section of the Chicago Municipal Code that establishes the city's local 911 surcharge:

"A surcharge is hereby imposed upon billed subscribers of telecommunications services within the corporate limits of the city other than "wireless communications service" as defined by Section 7-50-010 of this Code.

The surcharge shall be imposed at the monthly rate set forth below per **voice grade communications channel** between a subscriber's premises and the public switched network capable of providing access to the 9-1-1 emergency telephone system; except that where multiple voice grade communications channels are connected between the subscriber's premises and the public switched network through **a private branch exchange service (P.B.X.)**, five surcharges shall be imposed on every such **Regular Service** provisioned **Trunk line** leaving the subscriber's premises and 12 surcharges shall be imposed on every **Advanced Service** provisioned **Trunk line** leaving the subscriber's premises ... and where multiple voice grade communications channels are connected to the public switched network through **a telecommunications carrier's central office centrex-type service**, five surcharges shall be imposed on **the number of P.B.X. trunk**

equivalents for such system as determined by a **P.B.X. trunk equivalency table** based on generally acceptable telecommunications engineering principles and approved by the comptroller.”¹¹

The same section adds:

“Beginning January 1, 2021, the surcharge imposed shall be at the monthly rate of **\$5.00 per voice grade communications channel** between a subscriber’s premises and the public switched network capable of providing access to the 9-1-1 emergency telephone system, etc.”¹²

In turn, the term “trunk line” is defined as “**a transmission path, or group of transmission paths**, connecting a subscriber’s **Private Branch Exchange (“P.B.X.”)** to a telecommunications carrier’s public switched network.”¹³

Reading these provisions collectively, it is our current understanding that in addition to the fee amount levied upon Centrex systems being equal to the standard 911 surcharge rate of \$5.00 X a multiplier of 5 = \$25.00, such a special rate is imposed upon the entire PBX or Centrex Trunk (rather than each individual access line).

Accordingly, effective with this month’s release, we are hereby replacing the existing Unit Type code of ‘00’ (Access Line) associated with the Chicago 911 Surcharge (as captured by Tax Type 33/35) with a different Unit Type code of ‘20’ (Per Trunk).

Reconfiguration of the Mason County, West Virginia 911 Surcharge

Among the taxes covered in our database is the Mason County, West Virginia 911 Surcharge. Prior to this month’s release, our database reflected that the standard rate for this surcharge was equal to \$2.00 per access line (as captured by Tax Type 33/80) and \$6.50 per Centrex line (as captured by Tax Type 33/35). However, pursuant to local legislation adopted by the Mason County Commission on March 26, 2023, this rate structure is now being revised, effective July 1, 2023.

To quote the key provisions of this legislation:

“Pursuant to Section § 7-1-3cc of the West Virginia Code, the Mason County Commission shall impose a fee of \$6.00 per month per local business exchange service line and \$4.00 per month, per local residential service line, including voice-over-internet protocol to finance the projected costs of establishing, equipping, furnishing, and maintaining the Enhanced Emergency Telephone System. Said fee shall be effective July 1, 2023.”

The same ordinance added:

“To equalize the rate charged to PBX and Centrex systems, PBX and Centrex lines will be charged at the rate of \$6.50 per line per month. The fee for Centrex and PBX and similar systems shall be \$6.50 per line per month for the first 16 lines and at the rate of one eighth of \$6.50 per month for all additional lines.”¹⁴

The legislative provisions quoted above will now be captured by the following Tax Type & Tax Cat codes, effective July 1, 2023:

- * The fee of \$6.00 per month levied upon local business exchange service lines shall be captured by Tax Type & Tax Cat **33/03**.
- * The fee of \$4.00 per month levied upon local residential service lines shall be captured by Tax Type & Tax Cat **33/04**.
- * The fee of \$6.50 levied upon Centrex lines shall continue to be captured by Tax Type & Tax Cat **33/35** in the form of two tiers:

TIER #1: Fee Amount = \$6.50 up to a MAXIMUM UNIT BASE of 16 Centrex Lines

¹¹ Chicago Municipal Code § 3-64-030.A.

¹² Chicago Municipal Code § 3-64-030.A(3).

¹³ Chicago Municipal Code § 3-64-020.

¹⁴ “Proposed Amendment to the Mason County Commission’s Ordinance Establishing, Maintaining and Operating a Countywide Enhanced Emergency Telephone System (E-911) to Increase the Fee Upon Local Exchange Service Consumers to Finance its Maintenance”.

TIER #2: Fee Amount = \$0.8125 per Centrex Line in excess of a MINIMUM UNIT BASE of 16 Centrex Lines

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