

# Telecommunications Sales Tax Rates and Taxability

## Welcome to the Telecommunications Database

This bulletin provides important information about the December 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>.

## Updates to Current Telecommunications Database - Taxability Changes Effective December 2022

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### Change to the Taxability Status of Wireless Communications Services for Purposes of the Saint Joseph, Missouri Local License Tax Sold to Residential Customers

Among the taxes covered in our database is the Saint Joseph, Missouri Local License Tax (as captured by Tax Type 38/03).

To quote the key provisions of the city's Municipal Code which establish this tax:

#### "Imposition, amount of license fee

Every person or entity engaged in the business of operating for compensation a telephone communicating system, together with plant and facilities, including radio transmitters, and through wires and cables upon poles or in conduits along, upon, over or under the streets, alleys, parkways or other publicly owned premises within the city and other telephonic communication equipment shall pay to the city as a license fee a sum equal to seven percent of the gross amount received by such person(s) or entities as revenues for any purpose except residential."<sup>1</sup>

The same section of the code adds:

#### "Returns, payment of fee

Every person or entity engaged in the business described in this section [shall] file with the director of financial services on or before the last day of each month a statement of the gross receipts of such person or entity derived from the charges for the services received for telephone and radio service and facilities from **commercial, business and industrial users** during the month next preceding the month in which the statement is filed."<sup>2</sup>

Please note that prior to this month's release, our database reflected that wireless communications services sold to both commercial and residential customers were equally subject to this tax in contrast to sales of landline communications services whereby only commercial customers were subject to tax. The basis of this taxability distinction was our long held understanding that most mobile carriers did not distinguish between residential versus commercial users in their billing systems.

However, it is now our fresh understanding that in recent years the wireless industry has evolved to the point where mobile carriers now routinely distinguish between residential versus commercial customers.

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<sup>1</sup> Saint Joseph, MO Municipal Code § 27-305(a).

<sup>2</sup> Saint Joseph, MO Municipal Code § 27-305(c).

Accordingly, effective with this month's release, we are modifying our database to reflect that the Saint Joseph Local License Tax (as captured by Tax Type 38/03) is not imposed upon residential customers (as captured by Customer Types 00, 09 & 10) for purposes of the following Groups:

- Group 5004 (Two Way Paging)
- Group 5006 (Cellular Service)
- Group 5007 (Voice Mail Service)
- Group 5025 (Cellular Monthly Service)
- Group 5026 (Cellular Toll Service)
- Group & Item Code 5037/007 (Text Messaging)

### **Change to the Taxability Status of Wireless Communications Services for Purposes of the Kirkland, Washington Local Utility Gross Receipts Tax**

Among the taxes covered in our database is the Kirkland, Washington Local Utility Gross Receipts Tax (as captured by Tax Type 32/80).

Prior to this month's release our database reflected that this tax did not apply to the sale of wireless communications service. However, pursuant to a quality assurance review of governing legal sources (and as confirmed by a high-ranking city official), it is now our fresh understanding that the Kirkland, Washington Local Utility Gross Receipts Tax is indeed imposed upon wireless communications service.

To quote the key provisions of the city's municipal code:

"There are levied upon and shall be collected from every person engaging within this city in utility occupations annual license fees or occupation taxes in the amounts to be determined by the application of the rates against gross income as follows: Upon every person engaged in or carrying on the business of providing **telephone services**, a fee or tax equal to six percent of the total gross income from such business in the city, including one hundred percent of the total gross revenues derived from toll service, during the tax year for which the license is required."<sup>3</sup>

In turn, the term "telephone service" is defined to include:

"The transmission of information data or other communication in either sound or visual patterns from a point of origin to a point of destination when such transmission includes the utilization of electromagnetic, light spectrum vibrations or waves as a carrier."<sup>4</sup>

In response to our query letter, an administrative official with the city informed us as follows:

"The scope of Section 5.08.020(7)(C) is intended to encompass cellular or wireless phone service."<sup>5</sup>

Based upon this response, we are hereby updating our database effective with this month's release to reflect that the Kirkland, Washington Local Utility Gross Receipts Tax (as captured by Tax Type 32/80) is imposed upon the Intrastate and bundled Items contained in the following Groups:

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<sup>3</sup> Kirkland, WA Municipal Code § 5.08.050(1).

<sup>4</sup> Kirkland, WA Municipal Code § 5.08.020(7)(C).

<sup>5</sup> E-mail response from Michael Olson, Finance Director – City of Kirkland dated October 31, 2022.

- Group 5003 (One Way Paging)
- Group 5004 (Two Way Paging)
- Group 5006 (Cellular Service)
- Group 5018 (Cellular Prepaid Service)
- Group 5025 (Cellular Monthly Service)
- Group 5026 (Cellular Toll Service)
- Group 5029 (Wireless Data Service – Non-PSTN)
- Group 5030 (Wireless Data Service – PSTN)
- Item 5037/007 (Text Messaging)

**Changes to the Taxability of VOIP Service for Purposes of the Local Utility Gross Receipts Tax in the City of Tieton, WA**

Pursuant to ongoing quality assurance, we received an e-mail response from the city of Tieton, WA that their city’s local utility gross receipts tax (captured on our database as TaxType/TaxCat 32/80) is imposed on VOIP services.

Accordingly, based upon this response supplied to us by the city of Tieton, we are hereby modifying our database effective with the December 1<sup>st</sup> release to reflect that the Tieton Local Utility Gross Receipts Tax is imposed on the following Groups:

- Group 5032 (Interconnected VOIP – Fixed)
- Group 5041 (Wireless VOIP)
- Group 5044 (Interconnected VOIP – Nomadic)

**Change to the Taxability Status of Charges for E-mail Services**

Pursuant to our ongoing process of quality assurance review, we are modifying our database effective with this December 1<sup>st</sup> database release to reflect that charges for e-mail services are excluded from state and local tax liability, except for three specific taxes enumerated below.

This change to our database is based on the previous expiration of the “grandfather” clause of the Federal Internet Tax Moratorium<sup>6</sup>, effective July 1, 2020, which stated that with only a few limited exceptions (which will be discussed below) no state or local taxes may be imposed on charges for E-mail services.

To quote the federal statutory provisions which established the prohibition of state and local taxes from being imposed upon charges for e-mail service charges:

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<sup>6</sup> As codified in 47 U.S.C.A. § 151 Statutory Note.

“Moratorium. No State or political subdivision thereof may impose any of the following taxes: **Taxes on Internet access.**”<sup>7</sup>

In turn, the term “Internet Access” is defined as follows:

“(5) Internet access. The term ‘Internet access’—

“(A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;

“(B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold—

“(i) to provide such service; or

“(ii) to otherwise enable users to access content, information or other services offered over the Internet;

“(C) includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as a home page, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity;<sup>8</sup>

Accordingly, effective with the December 1<sup>st</sup> database release, we are hereby updating our database to reflect that the following taxes will no longer be imposed upon E-mail service charges (as captured by Items 5029/004 & 5030/004):

- Alaska County and City Sales Tax
- Hawaii General Excise Tax
- New Mexico Gross Receipts Tax
- Ohio Sales Tax
- South Carolina Sales Tax
- South Dakota Sales Tax

Please note however, that the following three state taxes which continued to be imposed on Internet access charges as these taxes are exempted from provisions of the Federal Internet Tax Moratorium and are therefore allowed (and will continue to be allowed) to be imposed on e-mail service charges:

- Nevada Commerce Tax (captured by TaxType/TaxCat 28/80)
- Texas Margin Tax (captured by TaxType/TaxCat 23/80)
- Washington Business & Occupation Tax (captured by TaxType/TaxCat 50/70)

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<sup>7</sup> See section 1101(a)(1) of the Federal Internet Tax Moratorium codified in section 47 U.S.C.A. § 151 Statutory Note.

<sup>8</sup> See section 1105(5) of the Federal Internet Tax Moratorium codified in section 47 U.S.C.A. § 151 Statutory Note.

## System Changes Effective December 2022

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### Texas Local Sales Tax: Two Additional Local Jurisdiction Now Taxes Telecommunications Service

As part of our ongoing process of quality assurance review, we are hereby updating our database to reflect that the following local jurisdictions in Texas impose their local option sales and use tax on telecommunication services:

- Angelina County - captured by Tax Types 02 & U2\*
- City of Fritch (in Hutchinson & Moore Counties) - captured by Tax Types 04/01 & U4/01.<sup>9</sup>

\*[Please see detailed Note below explaining how Texas State and County Sales Tax (including Angelina County) is now being reconfigured.]

### Reconfiguration of Texas State & County Sales & Use Tax

Among the taxes covered in our database is Texas Sales & Use Tax. Prior to this month's release, on the state level, Texas Sales & Use Tax was captured by a single set of Tax Type & Tax Cat combinations, namely Tax Type & Tax Cat **01/01** for purposes of Sales Tax and Tax Type & Tax Cat **U1/01** for purposes of Use Tax. Likewise, on the county level, Texas Sales & Use Tax was also captured by a single set of Tax Type & Tax Cat combinations, namely Tax Type & Tax Cat **02/01** for purposes of Sales Tax and Tax Type & Tax Cat **U2/01** for purposes of Use Tax. Please note that this singular set of Tax Type & Tax Cat combinations was applied universally to the sale and purchase of both general merchandise and telecommunications service given the fact that the tax rate imposed upon each kind of transaction was identical.

Nevertheless, due to our ongoing process of enhancing the granularity of our database, effective with this month's release, we are hereby dividing the rate records for Texas Sales & Use Tax into two separate Tax Cat classifications – i.e., Tax Cat '01' for General Merchandise and Tax Cat '80' for Telecommunications (and other services that clearly fall outside the scope of the sale or lease of general merchandise).

The primary motivation for this new dual classification structure is to better reflect that although the tax rates imposed upon each kind of transaction are equal, the statutory sources that impose Texas Sales & Use Tax upon each separate kind of transaction vary.

Please note, however, that our editorial team has decided to implement this database enhancement in multiple stages. More specifically, for the first stage of this enhancement coinciding with this December 2022 release, the division of Texas Sales & Use Tax into two separate Tax Cat classifications shall be limited to the state and county level. In an upcoming release, we shall extend this more granular classification scheme to the remaining levels of Texas Sales & Use Tax, i.e., County Local (Special District) Sales & Use Tax (as captured by Tax Types 03 & U3), City Sales & Use Tax (as captured by Tax Types 04 & U4) and City Local (Special District) Sales & Use Tax (as captured by Tax Types 05 & U5).

To quote the applicable statutory provisions which demonstrate the fact that transactions involving either the sale or purchase of general merchandise versus telecommunications service derive from different statutory sources:

For purposes of Texas State Sales Tax, the governing statute recites as follows:

"A tax is imposed on each sale of a **taxable item** in this state."<sup>10</sup>

The sales tax rate is 6-¼ percent of the sales price of the **taxable item** sold."<sup>11</sup>

In turn, the term "taxable item" is defined as follows:

"Taxable item" means **tangible personal property** and **taxable services**."<sup>12</sup>

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<sup>9</sup> See <https://comptroller.texas.gov/taxes/publications/96-339.php>.

<sup>10</sup> Texas Tax Code § 151.051(a).

<sup>11</sup> Texas Tax Code § 151.051(b).

<sup>12</sup> Texas Tax Code § 151.010.

Meanwhile, the term “taxable services” is defined to include the following transactions:

- cable television services<sup>13</sup>
- telecommunications service<sup>14</sup>

Additionally, the term “tangible personal property” is defined to mean “personal property that can be seen, weighed, measured, felt, or touched or that is perceptible to the senses in any other manner, and, for the purposes of this chapter, the term includes a computer program and a **telephone prepaid calling card**.”<sup>15</sup>

Therefore, sales of prepaid phone cards [as captured in our database by Group 5017 (Wireline Prepaid Service) & Group 5018 (Cellular Prepaid Service, etc.)] will continue to be taxed on the state level under Tax Cat ‘01’ (General Merchandise).

Finally, the term “cable television service” is defined to mean “the distribution of **video programming** with or without use of wires to subscribing or paying customers”<sup>16</sup> – thereby distinguishing that tax classification from the leasing of cable TV equipment (which instead falls under the “general merchandise” classification).

Accordingly, effective with this month’s release we are hereby introducing records for Tax Type & Tax Cat 01/80 & U1/80 at the rate of 6.25% (the same rate as Tax Type & Tax Cat 01/01 and U1/01) which shall be applied to the following Groups in the database instead of Tax Type & Tax Cat 01/01 and U1/01:

- Group 0015 (Late Payment Charges) / Item 006
- Group 5000 (Long Distance Toll Service)
- Group 5001 (Local Usage-Based Service)
- Group 5002 (Local Basic Service)
- Group 5003 (One Way Paging Service)
- Group 5004 (Two Way Paging Service)
- Group 5005 (900-Type Service)
- Group 5006 (Cellular Service)
- Group 5007 (Voice Mail Service)
- Group 5008 (800 Number Service)
- Group 5010 (Long Distance Service Plans)
- Group 5013 (Directory Assistance)
- Group 5016 (FCC Fees)
- Group 5020 (Non-PSTN Data Lines)
- Group 5021 (PSTN Data Lines)

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<sup>13</sup> Texas Tax Code § 151.0101(a)(2).

<sup>14</sup> Texas Tax Code § 151.0101(a)(6).

<sup>15</sup> Texas Tax Code § 151.009.

<sup>16</sup> Texas Tax Code § 151.0033.

- Group 5022 (Conferencing Services)
- Group 5023 (Voice Private Lines)
- Group 5024 (Data Private Lines)
- Group 5025 (Cellular Monthly Service)
- Group 5026 (Cellular Toll Service)
- Group 5028 (Satellite Radio)
- Group 5029 (Wireless Data Service – Non-PSTN)
- Group 5030 (Wireless Data Service – PSTN)
- Group 5031 (Cable Services) [Excluding Equipment Rental Items]
- Group 5032 (Fixed VOIP)
- Group 5033 (Miscellaneous Revenues)
- Group 5034 (Bundled Service Plan)
- Group 5037 (Wireless Enhanced Services)
- Group 5041 (Wireless VOIP)
- Group 5042 (Satellite TV Services) [Excluding Equipment Rental Items]
- Group 5044 (Nomadic VOIP)
- Group 5045 (Electronic Data Interchange)
- Group 5046 (Non-Interconnected VOIP)
- Group 5048 (Video Services)
- Group 5049 (Web Conferencing Services)
- Group 5051 (VPN Service)

**Removal of the East Wenatchee, Washington Local Utility Gross Receipts Tax from the Database**

Among the taxes covered in our database is the East Wenatchee, Washington Local Utility Gross Receipts Tax (as captured by Tax Type 32/80). Prior to this month’s release, our database reflected that this tax was imposed upon landline and cellular phone service at the rate of 6%. However, pursuant to local legislation adopted by the city, this tax has now been repealed.

To quote the key provisions of the ordinance adopted by the East Wenatchee City Council repealing this tax:

“THE CITY COUNCIL OF THE CITY OF EAST WENATCHEE DO ORDAIN AS FOLLOWS:

**Purpose.** The purpose of this ordinance is to amend Chapter 4.32 of the East Wenatchee Municipal Code to rescind the tax on the privilege of conducting telephone and cellular telephone business within the city limits of East Wenatchee.<sup>17</sup>

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<sup>17</sup> East Wenatchee, WA Ordinance Number 2022-17; Paragraph 4.

**Effective Date.** This Ordinance becomes effective October 1, 2022, to allow for the City’s Finance Department to properly notify all the businesses that currently remit this tax to the City.”<sup>18</sup>

Accordingly, we are now updating our database effective with this month’s release to reflect that the East Wenatchee, Washington Local Utility Gross Receipts Tax (as previously captured by Tax Type 32/80) is no longer imposed upon providers of landline telephone or cellular service and backdating the repeal of the tax to October 1, 2022.

As a side note, the rescinding of this tax has no effect upon the provisions of the tax that are imposed upon providers of gas and electric utility service.

**Expiration of Item 017 in Groups 5032 & 5044 Capturing the Taxability Status of Usage Based Charges for Non-I-VOIP**

As part of our ongoing process of keeping our database as streamlined as possible with a minimum of duplication on the Group & Item level, we are hereby expiring Item 017 [Non-Interconnected VOIP - Usage Based Charges (Undetermined)] in Group 5032 (Fixed VOIP) & Group 5044 (Nomadic VOIP) since these charges are already adequately covered by an identical Item in Group 5046 (Non-Interconnected VOIP), namely Item 005 [Usage-Based Charges (Undetermined)].

Accordingly, database users that sell usage-based charges for Non-I-VOIP; whereby the origination and termination points of such service are “undetermined”, should now map these kinds of charges to Group & Item Code 5046/005 on a going-forward basis.

**Geography**

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The geography content in our data is updated on a monthly basis, with larger quarterly updates. Changes include adding new geocodes, expiring geocodes that are no longer necessary, and remapping ZIP+4s to both existing geocodes and to new ones. For your convenience, a list of expired geocodes is provided below.

**FAQ**

**What is a geocode?**

A geocode represents a unique set of state, county, city and tax district areas.

**Why do geocodes matter to my company?**

Taxes are associated with geocodes, so proper calculation of taxes is dependent on accurate mapping of addresses to geocodes.

**What should I do next?**

Users do not need to do anything unless they are using mapped geocodes for recurring transactions. Should this be the case, it is strongly recommended that users refresh their mapped geocodes to make sure the proper geocodes will be used for future transactions, as changes other than expired geocodes can impact your tax rate.

**How do I find a new geocode if the old geocode is expired or reassigned?**

Please pass your address to the system and obtain a proper geocode again. In some cases, the geocode will not change if the address is still within the boundary of the new geographic segments.

**Expired geocodes**

GeoCode	State	County	BlockDesc	TaxDistrictDescription
US20059A0001	KS	FRANKLIN	OTTAWA	OTTAWA SOUTH 59 TRANS DEV DIST
US20173A0008	KS	SEDGWICK	WICHITA	WICHITA K-96 GREENWICH STAR BOND DIST

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<sup>18</sup> East Wenatchee, WA Ordinance Number 2022-17; Paragraph 10.



US20209A0047	KS	WYANDOTTE	KANSAS CITY	KANSAS CITY HOMEFIELD MENARDS STAR BOND
US29015A0009	MO	BENTON	WARSAW	US HIGHWAY 65 AND TRUMAN DAM ACCESS ROAD TRANS DEV DIST / WARSAW LINCOLN AMB DIST
US2903306832	MO	CARROLL	BOGARD	
US2903307426	MO	CARROLL	BOSWORTH	
US2903311566	MO	CARROLL	CARROLLTON	
US2903319378	MO	CARROLL	DE WITT	
US2903329908	MO	CARROLL	HALE	
US2903352760	MO	CARROLL	NORBORNE	
US2903373330	MO	CARROLL	TINA	
US2903300000	MO	CARROLL	UNINCORPORATED COUNTY AREA	
US2908380350	MO	HENRY	WINDSOR	
US29099A0047	MO	JEFFERSON	UNINCORPORATED COUNTY AREA	ANTONIA FIRE PROT DIST / JEFFERSON CO 911 DISPATCH BOARD
US29099A0050	MO	JEFFERSON	UNINCORPORATED COUNTY AREA	JEFFERSON CO 911 DISPATCH BOARD / ROCK COMM FIRE PROT DIST
US2915980350	MO	PETTIS	WINDSOR	
US4812162504	TX	DENTON	ROANOKE	
US4817768300	TX	GONZALES	SMILEY	
US4843962504	TX	TARRANT	ROANOKE	

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