

# Telecommunications Sales Tax Rates and Taxability

## Welcome to the Telecommunications Database

This bulletin provides important information about the July 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 July 2022

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### Change to the Taxability Status of Text Messaging Service for Purposes of the Indiana Universal Service Fund

Among the taxes covered in our database is the Indiana Universal Service Fund (USF). Prior to this month's release, our database reflected that the Indiana USF was imposed upon charges for wireless text messaging service (as captured by Group 5037; Item 007) at the inverse federal safe harbor rate for cellular communications service - i.e., 100% - the Interstate Safe Harbor Rate of 37.1% of wireless revenues = 62.9% of total revenues (as captured by Tax Type 26/80).

However, pursuant to a recent quality assurance review of governing legal sources, it is now our fresh understanding that charges for wireless text messaging service are actually excluded from the tax base of the Indiana USF based upon the following line of reasoning:

As per a regulatory order published by the Indiana Utility Regulatory Commission:

"The Indiana Utility Regulatory Commission ("Commission") created the Indiana Universal Service Fund in its Final Order in Cause No. 42144.

In addition to creating the fund, an Oversight Committee was established as an advisory body to the Commission with regard to the on-going operations of the IUSF. Additionally, the Commission determined that the IUSF should be administered by a single, neutral third-party administrator. The Oversight Committee is working with the Commission to select an administrator for the IUSF. While the Commission's Final Order speaks for itself, the Oversight Committee has developed the following Guidelines and materials for providers of intrastate retail telecommunications services to use in preparation for the implementation of the IUSF, anticipated to occur in October, 2007.

Basis for assessments:

Assessments will be based on "net billed intrastate retail telecommunications revenue" and include the following:

Wireless carriers shall use net billed intrastate retail telecommunications revenue. Where a factor is used to allocate telecommunications revenue to the intrastate jurisdiction, the factor used should be the complement to the factor used to allocate telecommunications revenue to the federal jurisdiction."<sup>1</sup>

Consequently, our Editorial Team interpreted these instructions as establishing the following set of rules:

RULE #1

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1 - "Indiana Universal Service Fund (IUSF) Implementation Guidelines" contained in IURC Regulatory Order issued under Cause Number 42144 [Filed July 25, 2007].

\* The revenue base for the Indiana USF for purposes of wireless communications service mirrors the Federal USF.

## RULE #2

\* The Percent Taxable value needed to be assigned to the majority of taxable wireless communications service Group & Item codes must equal 100% less the federal Interstate safe harbor percentage for cellular service (i.e.,  $100\% - 37.1\% = 62.9\%$ ).

Addressing Rule #1 first, from a historical perspective, the YES taxable decision for the Indiana USF that was originally entered into the database for purposes of Group & Item code 5037/007 reflected the fact that the FCC was completely silent as to whether text messaging service represented a taxable telecommunication service or a non-taxable information service.

Accordingly, consistent with our conservative default rules for populating the database for purposes of the FUSF, a YES taxable decision was entered for Group & Item code 5037/007 in order to protect our telecommunications carrier customers from the potential adverse impact of a USAC assessment audit for failing to classify text messaging revenues as being subject to FUSF assessment. However, in the interim, the FCC has taken official regulatory action to classify text messaging as a non-taxable information service.

Please note that for purposes of the FCC's Form 499-A which is the form that carriers are required to file to calculate their FUSF contribution liability, non-taxable "information service revenues" are reported on Line 418 which is the Line number entry used to report "Other revenues that should not be reported in the contribution bases."

As per the 2022 edition of the Instruction Guide accompanying Form 499-A:

"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, 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."<sup>2</sup>

Based upon these explicit guidelines, our database reflects that charges for Text Messaging (as captured by Group & Item code 5037/007) are not subject to the Federal Universal Service Fund (as captured by Tax Type 35/80). Accordingly, given the fact that for purposes of wireless telecommunications revenues, the Indiana USF explicitly mirrors the Federal USF, we are now changing the taxability decision for the Indiana USF (as captured by Tax Type 26/80) for purposes of Group & Item code 5037/007 from Taxable to Non-Taxable.

### **Change to the Taxability Status of One Way Paging Service and Two Way Paging Service for Purposes of Wyoming Sales & Use Tax**

Among the taxes covered in our database is the Wyoming Sales & Use Tax on both the State and County levels (as respectively captured by Tax Types 01/01, 02/01, U1/01 & U2/01). Prior to this month's release, our database reflected that charges for One Way Paging Service (as captured by Group 5003) and Two Way Paging Service (as captured by Group 5004) were not subject to Wyoming Sales & Use Tax.

However, pursuant to legislation enacted into law in 2022 (Footnote 3), it is our fresh understanding that charges for both One Way Paging Service and Two Way Paging Service on an Intrastate level shall now be subject to Wyoming Sales & Use Tax, effective July 1, 2022.

As a starting point, the statute that establishes Wyoming Sales Tax provides as follows:

"Taxable event. The following shall apply:

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2 - 2022 Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A; Page 34.

3 - Wyoming House Bill 21 (2022).

Except as provided by W.S. 39-15-105, there is levied an excise tax upon:

The sales price paid for intrastate telecommunications services including the consideration paid for the sale, rental or leasing of any equipment or ancillary services incidental thereto, and the sales price paid for intrastate calls which originate and terminate in a single state and are billed to a customer with a place of primary use in this state from mobile telecommunications services as provided by the Mobile Telecommunications Sourcing Act, 4 U.S.C. §§ 116 through 126."<sup>4</sup>

Wyoming is a member of the Streamlined Sales Tax Agreement. As required by the Streamlined Sales Tax Agreement, the Wyoming code defines the term "telecommunications services" as follows:

"Telecommunications service" means the electronic transmission, conveyance or routing of voice, data, audio, video or any other information or signals to a point, or between or among points."<sup>5</sup>

A separate paragraph in the same statute defines the term "paging service" as follows:

"Paging service" means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers, which transmissions may include messages or sounds."<sup>6</sup>

It is our understanding that absent any legislative provision to the contrary, paging services are automatically subject to state and local sales tax in a state that is both (A) a member of the Streamlined Sales Tax Agreement and (B) taxes telecommunications services as an enumerated transaction. In the case of Wyoming, such a legislative provision existed prior to July 1, 2022.

To quote the statutory provision in question:

"The following sales or leases are exempt from the excise tax imposed by this article:

For the purpose of exempting sales of services provided primarily to businesses, the following are exempt:

The sale of the service of transmitting radio waves to a one-way paging unit owned or rented by a service subscriber, where messages received are displayed or played on a paging unit as voice, tone and voice, numeric or alphanumeric, including mail services purchased with the pager."<sup>7</sup>

The question that immediately arises is whether a member state of the Streamlined Sales Tax Agreement is permitted to selectively tax two way paging services to the exclusion of one way paging services. As per an Interpretive Opinion published by the Streamlined Sales Tax Organization Governing Board, the answer to this question is an emphatic "No".

To quote the Interpretive Opinion in question:

"Issue:

The issue being considered is whether an exemption for one-way paging conflicts with the Agreement's definition of paging?

During the compliance review, the Compliance Review and Interpretations Committee determined that a number of states were exempting one-way paging.

The Agreement contains a definition of "paging" which includes both one-way and two-way paging. The Committee decided not to consider the issue as part of the compliance review and to bring the issue to the attention of the Governing Board. The Governing Board asked the

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4 - Wyoming Statutes § 39-15-103(a)(i)(C).

5 - Wyoming Statutes § 39-15-101(a)(xxxix)(U).

6 - Wyoming Statutes § 39-15-101(a)(xxxix)(O).

7 - Wyoming Statutes § 39-15-105(a)(viii)(K).

State and Local Advisory Council (SLAC) to conduct research and to make a recommendation to the Compliance Review and Interpretations Committee (CRIC).

Public Comment:

At the Governing Board's request, the SLAC conducted research on the issue. There were state and public comments received by SLAC which resulted in a paper that was submitted to CRIC.

Recommendation:

By a unanimous vote, the Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that the interpretation action proposed by the SLAC be accepted. No action by the SLAC or the Governing Board to address "one-way paging" is necessary at this time. States identified in the CRIC's 2009 Compliance Review Report have expressed the intent to address this matter within their states by eliminating use of the term "one-way paging" (administratively or legislatively, as appropriate) so that all paging services in those states (including one-way paging) are either taxed or exempt.

Rationale:

The Agreement defines "paging service" as "a 'telecommunications service' that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds." The Agreement does not contain a definition for "one-way paging."

Governing Board Rule 327.2, Part D provides that with respect to telecommunications, partial exclusion of a definition is prohibited.

A member state choosing to tax telecommunication services shall use applicable definitions contained in the Streamlined Sales and Use Tax Agreement and shall not exclude from imposition a part of any definition or any item included in such a definition unless the Streamlined Sales and Use Tax Agreement specifically permits such a variation."

The Interpretive Opinion concluded by emphatically stating that "There is no such provision for taxing or exempting one type of paging and not the other."<sup>8</sup>

Consequently, the most recent version of the official taxability matrix filed with the Streamlined Sales Tax Organization Governing Board by the Wyoming Department of Revenue reflected that the category of "Paging service" was "Excluded From Sales Price", citing Wyoming Statutes § 39-15-105(a)(viii)(K) as the source for this exclusion.<sup>9</sup>

However, as per legislation enacted into law in 2022, the exclusion from tax for one way paging has now been repealed.<sup>10</sup>

Accordingly, effective with this July 2022 month-end release, we are hereby updating our database to reflect that charges for One Way Paging Service (as captured by Group 5003) and Two Way Paging Service (as captured by Group 5004) sold on an Intrastate level are now subject to Wyoming Sales & Use Tax on both the State and County levels (as respectively captured by Tax Types 01/01, 02/01, U1/01 & U2/01).

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8 - Interpretive Opinion 2010-02 (Adopted August 17, 2010).

9 - Wyoming Taxability Matrix: Library of Definitions; Reference Number 61325 [Revised July 8, 2021].

10 - Wyoming House Bill 21 (2022); Section 1.

## System Changes Effective July 2022

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### Removal of the Indiana Utility Gross Receipts Tax from the Telecommunications Database

Among the taxes covered in our database is the Indiana Utility Gross Receipts (as captured by Tax Type 28/80).

To quote the text of the statute that established this tax:

" An income tax, known as the utility receipts tax, is imposed upon the receipt of:

(1) the entire taxable gross receipts of a taxpayer that is a resident or a domiciliary of Indiana; and

(2) the taxable gross receipts derived from activities or businesses or any other sources within Indiana by a taxpayer that is not a resident or a domiciliary of Indiana."<sup>11</sup>

Please note that pursuant to legislation enacted into law in 2022, [FOOTNOTE 12], the Indiana Utility Gross Receipts has been repealed, effective July 1, 2022.

To quote a Notice published by the Indiana Department of Revenue notifying taxpayers of the repealed status of this tax:

"Indiana repealed Utility Services Use and Utility Receipts taxes effective July 1, 2022. Although these laws are repealed, you must still file any past-due returns and pay taxes due to DOR.

If you are subject to Utility Services Use Tax, you need to file a final Form USU-103 by August 1, 2022, for the tax period ending June 30, 2022. You must file Form USU-103 even when no tax is due, unless your Indiana tax account has been closed properly. The Indiana Department of Revenue (DOR) will continue to accept payments for all filing periods prior to June 30, 2022.

If you are subject to Utility Receipts Tax, the 2022 tax year will be your last filing period. You will still file your return and owe this tax for periods collected from January 1 – June 30, 2022. You must file Form URT-1, Indiana Utility Receipts Tax Return, for tax year 2022, on or before April 18, 2023, or for fiscal filers, the 15th day of the 4th month after the end of the taxable year that includes June 30, 2022. Instructions on completing Form URT-1 will be updated to reflect the repeal of this law. Do not file the 2022 URT-1 on a 2021 or previous tax form. 2022 URT-1 forms will be available later this year.

You do not need to file and pay estimated payments for any quarters that begin after June 30, 2022. DOR will issue refunds as necessary to customers who made estimated payments and overpaid the amount of tax owed for 2022."<sup>13</sup>

Based upon the enactment of this legislation and the contents of this Indiana DOR Notice, we are hereby deleting the Indiana Utility Gross Receipts (as captured by Tax Type 28/80) from our database, effective with this July 2022 product release.

### East Carroll Parish, Louisiana - Reconfiguration of the Local 911 Surcharge

Among the regulatory fees covered in our database is the East Carroll Parish, Louisiana Local 911 Surcharge. Prior to this month's release, our database reflected that this surcharge was imposed upon landline customers in the form of a set of flat fees as follows:

\* RESIDENTIAL CUSTOMERS (Tax Type 33/04) = \$0.77

\* COMMERCIAL CUSTOMERS (Tax Type 33/03) = \$4.35

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11 - Indiana Code § 6-2.3-2-1.

12 - Indiana House Bill 1002 (2022).

13 - Indiana DOR Important Notice captioned "Repeal of Utility Services Use Tax and Utility Receipts Tax".

However, based upon a recent quality assurance review of governing legislative sources, it is now our fresh understanding that the East Carroll Parish, Louisiana Local 911 Surcharge is actually levied in the form of a percentage rate - i.e., 5% of the charge for local telephone service.

To quote the text of the ballot referendum presented to voters in East Carroll Parish on November 3, 1998:

"Shall the East Carroll Parish Communication District be authorized to levy an emergency telephone service charge not to exceed 5% of the highest tariff rate for local telephone service supplied within the District, for the purpose of establishing an enhanced 911 emergency telephone system; provided, that the service charge shall be imposed only upon the amount of the tariff rate for exchange access lines, that charges for telephone equipment and long distance service shall be exempt from the 5% service charge authorized hereby, and that exchange access facilities in excess of 100 per person per location shall be exempt from the 5% service charge imposed therein; said 5% service charge to be levied from January 1, 1999, until such time as the service charge is reduced or suspended by the governing authority of the District?"<sup>14</sup>

As per the state authorizing statute, the term "tariff rate" is defined as follows:

"“Tariff rate” means the rate or rates as stated in the service supplier’s tariffs and approved by the Public Service Commission, that represent the service supplier’s recurring charges for exchange access facilities, exclusive of all taxes, fees, licenses, or similar charges whatsoever. If exchange access facilities are provided by the service supplier under both flat and usage-sensitive rate schedules, the flat rates shall be considered the “tariff rate”."<sup>15</sup>

It is our understanding that this measure was approved by voters in the parish. It is our further understanding that in the interim since the measure was adopted, the East Carroll Parish Communications District has yet to enact local legislation converting the 5% service charge rate into a corresponding set of flat fees, as authorized by Louisiana Revised Statutes § 33:9106.

Therefore, in the absence of such local legislation, it is our seasoned interpretation that the most accurate way to display the East Carroll Parish, Louisiana Local 911 Surcharge in our system is via the 5% rate rather than a schedule of flat fees.

Accordingly, effective with this July 2022 product release, we are hereby replacing the existing flat fee structure associated with the East Carroll Parish, Louisiana Local 911 Surcharge (as respectively captured by Tax Types 33/03 & 33/04) with the original 5% surcharge rate (as captured by Tax Type 33/25).

Please note that the question that automatically arises for purposes of East Carroll Parish is "what dollar amount should the 5% surcharge rate be multiplied by?"

The answer to this question is as follows: Based upon the literal text of the Emergency 911 Proposition quoted above, the 5% surcharge rate is required to be applied against "the highest tariff rate for local telephone service supplied within the District". Based upon information supplied to us from outside sources, "the highest tariff rate for local telephone service supplied within the District" translates to the tariff rate charged by AT&T. The link to AT&T's General Exchange Guidebook is: <https://cpr.att.com/pdf/la/g003.pdf#page=7>.

As per Subsection A3.2.1 (captioned "Flat Rate Schedule"), the current monthly tariff rates for AT&T's Basic Local Exchange Service in the state of Louisiana are as follows:

\* RESIDENTIAL SERVICE (PER LINE) = \$ 33.00

\* BUSINESS SERVICE (PER LINE) = \$755.00

Multiplying each class of service by the 5% surcharge rate yields the following dollar values:

RESIDENTIAL E911 SURCHARGE = \$ 33.00 X .05 = \$1.65 per month

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14 East Carroll, Louisiana Emergency 911 Proposition.

15 Louisiana Revised Statutes § 33:9106.A(6).

COMMERCIAL E911 SURCHARGE = \$ 755.00 X .05 = \$37.75 per month

Admittedly, the calculated monthly rate for Commercial customers of \$37.75 is a steep increase from the existing rate of \$4.35 (as captured by Tax Type 33/03).

Nevertheless, on the plus side, it is our strictly informal understanding that a Local Exchange Carrier would still remain in de facto compliance with the East Carroll Parish Communication District by multiplying the 5% surcharge rate by its own individual carrier-specific tariff rate for residential or commercial local exchange service as an alternative to multiplying the 5% surcharge rate by AT&T's tariff rate.

#### **West Feliciana Parish, Louisiana - Reconfiguration of the Local 911 Surcharge**

Among the regulatory fees covered in our database is the West Feliciana Parish, Louisiana Local 911 Surcharge. Prior to this month's release, our database reflected that this surcharge was levied on the basis of a percentage of a carrier's tariff rate for local exchange access lines (as captured in our database by Tax Type 33/25).

To quote the text of the ballot proposal approved by registered voters residing in the West Feliciana Parish Communications District:

"Shall the West Feliciana Parish Communications District be authorized to levy an emergency telephone service charge not to exceed 5% of the tariff rate for local telephone service supplied within the District, for the purpose of establishing, maintaining and operating an enhanced 911 emergency telephone system; provided, that the service charge be imposed only upon the amount of the tariff rate for exchange access lines or their equivalent, that charges for telephone equipment and long distance service shall be exempt from the 5% service charge and that exchange access facilities in excess of 100 per person per location shall be exempt from the 5% service charge imposed herein; said 5% service charge to be levied from January 1, 1991, until such time as the service charge is reduced or suspended by the governing authority of the District?"<sup>16</sup>

However, based upon correspondence received from the Parish Sheriff's Office [Footnote 17], it is now our fresh understanding that West Feliciana Parish has since converted its Local 911 Surcharge into a set of flat-fees.

Accordingly, effective with this July product release, we are hereby replacing the existing West Feliciana Parish, Louisiana Local 911 Surcharge at the rate of 5% of the tariff rate for local exchange access lines (as captured by Tax Type 33/25) with the following set of fees:

\* Landline - Residential (Tax Type 33/04) = \$0.66

\* Landline - Business (Tax Type 33/03) = \$1.99

\* VOIP Lines - Both Residential & Business (Tax Type 33/V1) = \$1.00

Finally, please note that in conjunction with this reconfiguration, we are also changing the Base Type value for the West Feliciana Parish, Louisiana Local 911 Surcharge from '12' (Consumer - Tariff Rate) to '06' (Consumer - Access Line) for each new Tax Type/Tax Cat record.

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

Effective July 1, 2022, the following additional local jurisdiction in Texas will now impose its local option sales & use tax on telecommunication services: City of Josephine (in Collin & Hunt Counties) - captured by Tax Type, Tax Cat 04,01 & U4,01. [FOOTNOTE 18]

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16 - Proposition Number 1 presented to Voters of the West Feliciana Parish Communications District October 6, 1990.

17 - E-mail from Cathy Cavin, Accounts Receivable Manager - West Feliciana Parish Sheriff's Office dated April 23, 2022.

18 - See [http://www.cpa.state.tx.us/taxinfo/taxpubs/tx96\\_339.html](http://www.cpa.state.tx.us/taxinfo/taxpubs/tx96_339.html) for further reference.

## Updates to Current Telecommunications Database - Late Rate Changes Effective July 2022

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Based upon information made available to us at the close of our monthly production schedule, the rate for the following taxes in our system are being changed effective with this July 2022 product release:

- Missouri PSC Assessment (captured by Tax Type 08/80) [New Rate = 0.0015935888 = 0.15935888% of Revenues]
- Michigan County Technical 911 Surcharge (captured by Tax Type 33/11) [New Rate = 61 cents]
- Texas Local Right-of-Way Fee (captured by Tax Types 24/03, 24/04 & 24/39) [New Rates vary by local jurisdiction]

Please note that the Effective Date for the Missouri PSC Assessment and the Michigan County Technical 911 Surcharge is July 1, 2022 while the Effective Date for the Texas Local Right-of-Way Fee is May 1, 2022.

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