

Telecommunications Sales Tax Rates and Taxability

Welcome to the Telecommunications Database

This bulletin provides important information about the November 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 November 2022

Change to the Taxability Status of Subscriber Line Charges for Purposes of the Texas Universal Service Fund

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

Prior to this month's release, our database reflected that Subscriber Line Charges (as captured by Group & Item Code 5016/001) were subject to this assessment. However, pursuant to a recent quality assurance review of governing legal sources, it is now our fresh understanding that Subscriber Line Charges are actually excluded from the assessment base of the Texas Universal Service Fund.

As a starting point, the governing regulation that establishes the revenue base of this assessment declares as follows:

"Basis for assessments. Assessments will be based upon the following:

Actuals. Effective December 1, 2017, assessments shall be made to each telecommunications provider based upon its monthly taxable **actual intrastate telecommunications services receipts** reported by that telecommunications provider under Chapter 151 of the Texas Tax Code."¹

Chapter 151 of the Texas Tax Code is a reference to Texas Sales Tax. Implicitly, as a general rule, the Texas USF shares the same revenue base as Texas Sales Tax.

Meanwhile, our basis for determining that Subscriber Line Charges are subject to Texas Sales Tax as an adjunct of telecommunications service is derived from an audit manual published by the Texas Comptroller of Public Accounts which contains an enumerated list of charges that are included in the revenue base of Texas Sales Tax. Included within this list is the following example:

"Reimbursements: charges that represent taxes or assessments levied on a utility and that are passed on to its customers. These charges become a part of the sales price of the telecom service and are subject to tax in the same manner as the service itself, when passed through to the customer : ([9908626L](#), [200204037L](#)) These include: **FCC Subscriber Line Charge (SLC)**."²

Please note, however, that an exact 1:1 correlation does not exist between the revenue base of Texas Sales Tax and the revenue base of the Texas USF. The same regulation defines the term "Actual intrastate telecommunications services receipts" to mean the following:

"Telecommunications services receipts that are clearly identifiable as **intrastate telecommunications services receipts**, as defined in subparagraph (E) of this paragraph."³

¹ 16 Texas Administrative Code § 26.420(f)(3)(A).

² Audit Procedures for Telecommunications Taxes; Chapter 5 – Sales and Use Tax; Sales Tax Assessment Base; Example Number 55.k [See <https://comptroller.texas.gov/taxes/audit/manuals/telecommunications/ch5.php>].

In turn, the term “Intrastate telecommunications services receipts” is defined to mean:

“Taxable telecommunications services receipts as reported by the telecommunications provider under Chapter 151 of the Texas Tax Code, with the exception of: ... **Telecommunications services receipts from interstate communications and international communications included in telecommunications services receipts reported under Chapter 151 of the Texas Tax Code.”**⁴

Meanwhile, as per a ruling issued by the FCC in 1986:

“(2) End user payment and collection includes expenses incurred in relation to the payment and collection of amounts billed to end users. End user payment and collection expenses are first segregated into the following sub-classifications based on relative total state and interstate billed revenues (excluding revenues billed to interexchange carriers and/or revenues deposited in coin boxes) for services for which end user payment and collection is provided: state private line and special access including WATS closed end; interstate private line and special access including WATS closed end; state message toll; interstate message toll, and **interstate subscriber line charge**; local, including directory advertising; and TWX.

(i) State private line and special access including WATS closed end payment and collection expense is assigned to the state jurisdiction.

(ii) Interstate private line and special access including WATS closed end payment and collection expense is assigned to the interstate jurisdiction.

(iii) State message toll payment and collection expense is assigned to the state jurisdiction.

(iv) Interstate message toll and **interstate subscriber line charge payment** and collection expense is assigned to the **interstate jurisdiction.**”⁵

Therefore, although such subscriber line charge revenues are subject to Texas Sales Tax as a telecommunications receipt, they are not Intrastate receipts and therefore not subject to the Texas USF.

Accordingly, effective with this November release, we shall be modifying our database to reflect that Subscriber Line Charges (as captured by Group & Item code 5016/001) are not subject to the Texas USF (as captured by Tax Type 26/80).

Change to the Taxability Status of Dark Fiber for Purposes of the Portland, Oregon Utility License Fee

Among the regulatory surcharges covered in our database is the Portland, Oregon Utility License Fee (as captured by Tax Type 37/80).

Prior to this month’s release, our database reflected that charges for Dark Fiber (as captured by Group 5047) were not subject to this fee. However, pursuant to a recent quality assurance review of governing legal sources, it is now our fresh understanding that charges for dark fiber are actually subject to the Portland, Oregon Utility License Fee.

As a starting point, the relevant provision in the Portland City Code that establishes the Utility License Fee recites as follows:

“The fee for a utility license shall be measured by a percentage of the gross revenues earned by the utility for each quarter year period of licensed operation. The percentage for each type of utility shall be as follows: Telecommunications Utility – 5%.”⁶

The term “telecommunications” is defined as follows:

“Telecommunications” means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming or any other information between or among points by wire, cable, fiber optics, laser, microwave, radio, or similar facilities, with or without benefit of any closed transmission medium.”⁷

³ 16 Texas Administrative Code § 26.420(f)(2)(A).

⁴ 16 Texas Administrative Code § 26.420(f)(2)(E)(ii).

⁵ “In the Matter of Amendment of Part 67 of the Commission’s Rules and Establishment of a Federal-State Joint Board” (FCC Release Number 86J-4 Released July 25, 1986) [1986 FCC LEXIS 2984].

⁶ Portland City Code § 7.14.060.A.

Meanwhile, the term "Gross revenue" is defined as follows:

"Gross revenue" means any revenue earned within the City, after adjustment for the net write-off of uncollectible accounts, from the sale of electrical energy, gas, district heating or cooling, or water, or sewage disposal and treatment service, from the furnishing or sale of communications or associated services by or from a telecommunications or cable communications business, **or any revenue earned by a Utility within the City from the use, rental, or lease of operating facilities**, etc."⁸

Our tax team has learned that an auditor with the city of Portland has analyzed the taxability status of dark fiber charges as follows:

"The definition of gross revenues states, "Gross revenue" means any revenue earned by a Utility within the City from the use, rental, or lease of operating facilities..." PCC 7.14.040(D). Merriam-webster defines "facility" as, "something that makes an action, operation, or course of conduct easier – usually used in plural [facilities]." The lease of Dark Fiber to another entity allows the lessee to light-up the dark fiber, making it easier for that utility to provide telecommunications services to their customers. As a result, the lease of Dark Fiber is considered the lease of an operating facility. Thus, all Dark Fiber revenues shall be included in gross revenues."

Based upon this official advice, we are hereby modifying our database effective with this month's release to reflect that charges for the lease of a dark fiber network (as captured by Items 001 & 002 in Group 5047) are subject to the Portland, Oregon Utility License Fee (as captured by Tax Type 37/80).

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⁷ Portland City Code § 7.14.040.H.

⁸ Portland City Code § 7.14.040.D.

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