

Telecommunications Sales Tax Rates and Taxability

Welcome to the Telecommunications Database

This bulletin provides important information about the June 2024 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 June 2024

Change to the Taxability Status of Cable Television Service for Purposes of the Portland, Oregon Utility License Fee

Among the taxes 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 this tax was not imposed upon charges for cable television service (as captured by Group 5031).

However, pursuant to a quality assurance review of governing legislative services, it is our fresh understanding that the Portland, Oregon Utility License Fee is indeed imposed upon charges for cable television service.

As per the recently adopted code provisions that established the new Right-of-Way Access Fee (that is replacing the Portland, Oregon Utility License Fee):

"Every person subject to this Chapter will pay the fee to access and use the right-of-way for every **utility service** provided in the amount determined by ordinance of the City Council."¹

In turn, the term "utility service" is defined to mean "the provision of electricity, natural gas, telecommunications services, **cable services**, or other services to or from customers within the corporate boundaries of the City, or the transmission of any of these services through the City, whether or not customers within the City are served by those transmissions."²

"**Cable service**" is defined consistent with federal laws and means the one-way transmission to subscribers of **video programming** or **other programming service** along with subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service."³

Please note that according to the Fee Schedule adopted by the Portland City Council, the rate of taxation applicable to "Cable" providers is equal to 5% of Gross Revenues [as captured by Tax Type 37/80].

¹ Portland, Oregon City Code § 12.15.140.A.

² Portland, Oregon City Code § 12.15.030.V.

³ Portland, Oregon City Code § 12.15.030.C.

Accordingly, effective with this month's release, we are hereby modifying our database to reflect that the newly renamed "Right-of-Way Access Fee" (as captured by Tax Type 37/80) is imposed upon Cable Services (as captured by Group 5031) on the Group level.

Change to the Taxability Status of a Monthly Plan for Prepaid Wireless Service for Purposes of the Washington State Prepaid Wireless 988 Tax

Among the Group & Item codes contained in our database is Group 5052 / Item 001 which is denominated "Prepaid Wireless Service – Monthly Plan".

The accompanying explanation of this Item code in our Telecommunications Database Mapping guide is: "Monthly recurring charge for a prepaid wireless phone plan whereby the vendor wishes to have all fees, surcharges and taxes calculated together in a single transaction."

Prior to this month's release, our database reflected that the Washington State Prepaid Wireless 988 Tax (as captured by Tax Type 70/TS) was not imposed upon this Group & Item code.

However, pursuant to a quality assurance review of governing legislative services, it is our fresh understanding that the Washington State Prepaid Wireless 988 Tax is implicitly imposed upon a monthly recurring charge for a prepaid wireless phone plan based upon the following legislative sources:

As per the statutory provision that established this tax:

"A statewide 988 behavioral health crisis response and suicide prevention line tax is imposed on the use of all **radio access lines**: ... By consumers whose **retail transaction** occurs within the state in the amount set forth in this subsection (1)(a)(ii) per **retail transaction**.

The amount of tax must be uniform for each **retail transaction** under this subsection (1) and is as follows: Beginning January 1, 2023, the tax rate is 40 cents for each **radio access line**.⁴

A separate provision adds:

"The tax imposed under this subsection (1) must be remitted to the department by radio communications service companies, including those companies that resell radio access lines, and **sellers of prepaid wireless telecommunications service**, on a tax return provided by the department."⁵

A separate statute adds:

"The statewide 988 behavioral health crisis response and suicide prevention line tax imposed by this chapter must be collected from the consumer by **the seller of a prepaid wireless telecommunications service** for each **retail transaction** occurring in this state."⁶

As per a separate statute: "The definitions in **RCW 82.14B.020** apply to this chapter."⁷

As per the referenced statute:

"**"Retail transaction"** means the purchase of **prepaid wireless telecommunications service** from a seller for any purpose other than resale."⁸

As per that same Definitions statute:

⁴ Revised Code of Washington § 82.86.020(1)(a)(ii)(B).

⁵ Revised Code of Washington § 82.86.020(1)(b).

⁶ Revised Code of Washington § 82.86.030(2)(a).

⁷ Revised Code of Washington § 82.86.010(2).

⁸ Revised Code of Washington § 82.14B.020(14).

““Prepaid wireless telecommunications service” means a telecommunications service that provides the right to use **mobile wireless service** as well as other non-telecommunications services including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in full in advance and *sold in predetermined units or dollars of which the number declines with use in a known amount.*”⁹

Accordingly, based upon this series of statutory provisions, we are hereby modifying our database with this month’s release to reflect that the Washington State Prepaid Wireless 988 Tax (as captured by Tax Type 70/TS) is imposed upon a monthly recurring charge for a prepaid wireless phone plan (as captured by Group & Item code 5052/001).

Updates to Current Telecommunications Database - System Changes Effective June 2024

Change to the Nomenclature of Various Local Taxes Imposed by the City of Portland, Oregon

Among the taxes covered in our database is a set of local fees imposed upon telecommunication providers by the City of Portland, Oregon.

The set of taxes is as follows:

- Portland Privilege Tax (as captured by the combination of Tax Types 24/08 & 24/21)
- Utility License Fee (as captured by tax Type 37/80)

Until recently, these taxes have typically been converted into multiple sets of company-specific franchise agreements. However, based upon the recent enactment of local legislation¹⁰, it is fresh understanding that the City of Portland, Oregon has decided to consolidate these taxes under “one roof” through the establishment of a more unitary (and non-company specific) local right-of-way surcharge.

To quote a legislative summary of this ordinance posted on the City of Portland’s official website:

“The City has typically granted individually negotiated franchise agreements to each utility using the City’s rights-of-way to provide utility services, with each franchise agreement setting forth the terms of use and compensation to be paid for such use. [Section 1.2]

The City has determined that it can more effectively, efficiently, fairly, and uniformly manage the City’s rights-of-way and provide consistent standards for utility access to and use of the rights-of-way through licenses, rather than franchise agreements. [Section 1.3]

Ordinance 191613 will add a new Portland City Code Chapter 12.15 that will regulate access for utilities operating in the City’s rights-of-way and assist the City in exercising its authority to secure compensation to the City and its residents for utility use of the rights-of-way. [Section 1.11]

The Ordinance adopts a new Portland City Code Title 12 as shown in Exhibit A into City Code. [Section 1.12]

The Ordinance also adopts the right-of-way fee schedule shown in Exhibit B. [Section 1.13]

Exhibits A and B will become effective on April 1, 2024, to coincide with the start of the next calendar quarter to accommodate invoicing and payments to the City from licensees who register under this Chapter. [Section 1.14]

NOW, THEREFORE, the Council directs:

- A. Add Code Title 12, Utility Operators, as shown in Exhibit A, effective April 1, 2024.

⁹ Revised Code of Washington § 82.14B.020(10).

¹⁰ Ordinance Number 191613

B. Adopt Annual Rights-of-Way Fee Schedule as attached in Exhibit B effective April 1, 2024.”¹¹

As noted above, the Utility License Fee (as captured by Tax Type 37/80) is one of the local taxes that has become incorporated into the new Right-of-Way Access Fee.

To quote a separate web page document that summarized the scope of the Right-of-Way Access Fee:

“Utility License Overview

Portland’s Utility License Law (City Code Section 7.14) may require you to obtain a Utility License ("License"). Any utility operating in the City of Portland is required to obtain a License. Licenses are automatically renewed each year.

A "Utility" is the business of supplying electrical energy, gas, district heating or cooling, water, cable, **communications, or other services through or associated with telecommunications utility, telephone or coaxial cable**, etc. (Code Section 7.14.040.H).

Utilities operating in Portland are subject to the Utility License Law whether they have a franchise agreement or other similar authority to be in the right of way. A franchisee may not be required to get a license if its franchise fee payments are equal to or exceed the amount owed under the Utility License Law (City Code 7.14.050.B, 7.14.070). If your company only provides Internet Access or Internet Access Service within the Federal Internet Tax Freedom Act (47 USC 151), it is exempt from the Utility License Law requirements.

All other utilities will need a License regardless of whether or not the utility owns or uses physical facilities in public streets.

A License is required of all **wire line telecommunications companies** including VOIP providers and any utility that resells lines or services from Qwest or others ("resellers").¹²

Meanwhile, a separate document on the City of Portland’s website further elaborates upon the application of the pre-existing Utility License Fee to VOIP providers:

“Q2: What is the Utility License Law and who does it apply to?

A: The Utility License Law is a tax on utilities operating and earning revenue within the City of Portland. PCC 7.14.020; 7.14.040. If you are a “utility” as defined in PCC 7.14.040, supplying services and earning revenue from those services within the City of Portland, then the Utility License Law applies. The scope includes any communications company offering **wireline voice services** to customers in Portland, such as resellers and **VoIP providers**.

Q8: We provide Voice over Internet Protocol (VoIP). Does the Utility License Law apply to us?

A: Yes. “Cable Communications Utility” is a broadly defined term and includes **VoIP** and resellers. See Code 7.14.040.B and Administrative Rule UTL-3.05.”¹³

The exact code provisions establishing the reconfiguration of the Portland Privilege Tax (as captured by the combination of Tax Types 24/08 & 24/21) and Utility License Fee (as captured by Tax Type 37/80) to the new Right-of-Way Access Fee recite as follows:

Portland Privilege Tax

¹¹ See <https://www.portland.gov/council/documents/ordinance/passed/191613>.

¹² See <https://www.portland.gov/bps/com-tech/franchise-utility/utility-licenses#:~:text=for%20more%20information.-,Utility%20License%20Overview,are%20automatically%20renewed%20each%20year.>

¹³ See <https://www.portland.gov/bps/com-tech/franchise-utility/utility-licenses/faq-utility-license-law#toc-q2-what-is-the-utility-license-law-and-who-does-it-apply-to->.

“Any **telecommunications utility** using or occupying a street, alley, or highway for other than travel within the City without a franchise for 30 days or longer must pay a **right-of-way use fee**. The right-of-way use fee will be due and payable so long as the telecommunications utility operates within the City and uses or occupies the City’s streets, alleys, or highways for its **telecommunications utility services** or equipment”.¹⁴

“The right-of-way use fee for **telecommunications utilities** under this Subsection is **7 percent** of the **telecommunications utility’s gross revenues** earned within the corporate limits of the City for each consecutive 3-month period.

For the purposes of this paragraph, “**gross revenues**” means all revenues derived from **exchange access services**, as that term is defined in ORS 221.515, less uncollectibles from such revenues.”¹⁵

Utility License Fee

“Every person subject to this Chapter will pay the fee to access and use the right-of-way for every **utility service** provided in the amount determined by ordinance of the City Council.”¹⁶

In turn, the term “utility service” is defined to mean “the provision of electricity, natural gas, **telecommunications services**, cable services, or other services to or from customers within the corporate boundaries of the City, or the transmission of any of these services through the City, whether or not customers within the City are served by those transmissions.”¹⁷

In turn, the term “telecommunications services” is defined to mean “the transmission of information chosen by a **telecommunications utility customer**, between or among points specified by the customer, without change in the form or content of the information sent or received, offered for a fee to the public, or to such class of users as to be effectively available to the public, without regard to the transmission protocol employed, and whether or not the transmission medium is owned by the provider itself.”¹⁸

Please note that according to the Fee Schedule adopted by the Portland City Council, the rate of taxation applicable to “Communications” providers is equal to 5% of Gross Revenues [as captured by Tax Type 37/80] while the rate of taxation applicable to a “Telecommunications utility” (i.e., an ILEC as captured by Provider Type 00) is equal to 7% of Gross Revenues [as captured by the combination of Tax Types 24/08 & 24/21].¹⁹

Accordingly, effective with this month’s release we are hereby collectively renaming Portland Privilege Tax (as captured by the combination of Tax Types 24/08 & 24/21) and Utility License Fee (as captured by Tax Type 37/80) as the “Right-of-Way Access Fee”.

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¹⁴ Portland, Oregon City Code § 12.15.090.C.1.

¹⁵ Portland, Oregon City Code § 12.15.090.C.2.

¹⁶ Portland, Oregon City Code § 12.15.140.A.

¹⁷ Portland, Oregon City Code § 12.15.030.V.

¹⁸ Portland, Oregon City Code § 12.15.030.R.

¹⁹ Exhibit B: Annual Rights-of-Way fees Pursuant to PCC Chapter 12.15.

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