

# Telecommunications Sales Tax Rates and Taxability

## Welcome to the Telecommunications Database

This bulletin provides important information about the May 2023 mid-month 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 May 2023

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### Change to the Taxability Status of Cable TV Service for Purposes of the La Junta, Colorado Local Sales & Use Tax

Among the taxes covered in our database is the La Junta, Colorado Local Sales & Use Tax (as captured by Tax Types 04/01 & U4/01). Prior to this month's release, our database reflected that this local variation of Colorado Sales Tax was imposed upon charges for Cable TV Service (as captured by Items 001-003, 007 & 009 in Group 5031) as well as charges for Internet Protocol TV Service (as captured by Group & Item code 5048/001). However, based upon a recent review of governing legal sources, it is now our fresh interpretation that charges for cable television service and Internet Protocol TV Service are no longer subject to the La Junta, Colorado Local Sales & Use Tax. Please note that the original application of the La Junta Sales Tax upon charges for video programming services was based upon a set of provisions contained in the city's municipal code which recited as follows:

#### "Sales tax:

There is hereby levied a tax or excise upon all sales of tangible personal property and services specified in Subsection 3.04.030(a).

The rate levied shall be three percent (3%)."<sup>1</sup>

Meanwhile, a separate provision added:

"The tax levied by Subsection 3.04.020(a) shall apply to the price of the following: Pay, cable or subscription television, including charges for service, installation, connection or any similar charge."<sup>2</sup>

However, we have since learned that despite its status as a home-rule city, the city switched over from having a self-administered sales tax to one that is state-collected. This fact is illustrated by an entry in a Colorado Department of Revenue publication which lists the city of La Junta as a city which features a "State-Collected City Sales Tax".<sup>3</sup>

Based upon well-established rules, any city whose local sales tax is state-collected is required to share the tax base of Colorado State Sales Tax. Accordingly, given that Colorado State Sales Tax is not imposed upon video programming services, we are hereby modifying our database effective with this month's release to reflect that the La Junta, Colorado Local Sales & Use Tax (as captured by Tax Types 04/01 & U4/01) is not imposed upon charges for Cable TV Service (as captured by Items 001-003, 007 & 009 in Group 5031) or charges for Internet Protocol TV Service (as captured by Group & Item code 5048/001).

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<sup>1</sup> La Junta, CO Municipal Code § 3.04.020(a).

<sup>2</sup> La Junta, CO Municipal Code § 3.04.0230(a)(5).

<sup>3</sup> See Colorado Department of Revenue Form DR 1002 captioned "Colorado Sales/Use Tax Rates"; Page 8

## **Change to the Taxability Status of Mobile Telecommunication Service for Purposes of the Kansas City, Missouri Local License Tax**

Among the taxes covered in our database is the Kansas City, Missouri Local License Tax (as captured by Tax Type 38/28).

Prior to this month's release, our database reflected that this local tax was not imposed upon monthly recurring charges for mobile telecommunications service (as captured by Groups 5006 & 5025). However, pursuant to a recent review of governing legal sources, it is now our fresh interpretation that monthly recurring charges for mobile telecommunications service are indeed subject to the Kansas City, Missouri Local License Tax based upon the following line of reasoning:

As a starting point, the city's municipal code provision that establishes this tax recites as follows:

### **"Quarterly license fee imposed**

Every telephone company and every corporation, company, association, joint stock company or association, partnership and person, and their lessees, trustees or receivers, appointed by any court whatsoever, owning, operating, leasing, controlling or managing any telephone line or part of telephone line used in the conduct of the business of affording telephonic communication for hire, shall pay to the city a license tax which shall be a sum equal to six percent of the gross receipts derived and collected from its or their customers located within the city, and any services there provided, except such receipts as represent charges for message rate toll, or long distance telephone service, charges for message rate interzone telephone service, charges for exclusive interstate service of any kind, charges for Morse, telegraph, television or radio program transmission facilities, or for other services furnished exclusively and permanently in connection with services extending beyond the boundaries of the city, etc."<sup>4</sup>

The municipal code provision quoted above is silent as to the taxability status of mobile telecommunications service. However, as per a separate provision contained within Chapter 40 (Licenses), Article VI (Business Regulations):

"For purposes of **section 40-360**, telephone businesses generally, and section 40-361, same—emergency tax, in determining whether a particular customer or service address is residential or business, a **wireless telecommunications company** may rely upon existing customer classifications in its books and records, kept in the ordinary course of business, such as individual, customer, enterprise, business, corporate, non-residential, or government."<sup>5</sup>

Additionally, as per the forms page of the Kansas City, Missouri municipal government website:

"Form RD-UTIL is a quarterly return used to report and remit the utility license tax of 6% on the gross receipts of Electric, Gas and Telephone (Landline or **Wireless**) companies or 2.4% on the gross receipts of Steam and Heating companies."<sup>6</sup>

Finally, as per Form RD-UTIL itself, one of the boxes for a taxpayer to check off is "Wireless" which is defined as follows:

"Telephone Business (**Wireless Services**) - Any entity owning, operating, controlling, or managing any **wireless telephone line** or part of **wireless telephone line** used in the conduct of the business of affording telephonic communication for hire."<sup>7</sup>

Based upon these explicit guidelines, we are hereby updating our database effective with this month's release to reflect that the Kansas City, Missouri Local License Tax (as captured by Tax Type 38/28) is imposed upon monthly recurring charges for mobile telecommunications service as captured by the following Group & Item codes:

- Group 5006 (Cellular Service); Items 001, 002 & 011
- Group 5025 (Cellular Monthly Service); Items 001, 002 & 017

## **Change to the Taxability Status of Mobile Telecommunication Service for Purposes of the Kansas City, Missouri Emergency License Tax**

Among the taxes covered in our database is the Kansas City, Missouri Emergency License Tax (as captured by Tax Type 37/03).

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<sup>4</sup> Kansas City, Missouri Municipal Code § 40-360(a).

<sup>5</sup> Kansas City, Missouri Municipal Code § 40-361.5.

<sup>6</sup> See <https://www.kcmo.gov/city-hall/departments/finance/tax-home/tax-forms>.

<sup>7</sup> Form RD-UTIL = "Utilities License Tax – Quarterly License"; General Instructions; Section 1(e).

Prior to this month's release, our database reflected that this local tax was not imposed upon monthly recurring charges for mobile telecommunications service (as captured by Groups 5006 & 5025). However, pursuant to a recent review of governing legal sources, it is now our fresh interpretation that monthly recurring charges for mobile telecommunications service are indeed subject to the Kansas City, Missouri Emergency License Tax based upon the following line of reasoning:

As a starting point, the city's municipal code provision that establishes this tax recites as follows:

**"Imposition; amount.**

Every telephone company and every corporation, company, association, joint stock company or association, partnership and person, and their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, leasing, controlling or managing any telephone line or part of telephone line used in the conduct of the business of affording telephonic communication for hire, shall, in addition to all other taxes, payments or requirements now or hereafter required by law or city ordinance, pay to the city an emergency license tax as follows: an emergency license tax of a sum equal to three percent of the gross receipts derived for service rendered to **residential users** within the city, at the same times, for the same periods, in advance, but otherwise based upon the same computations and subject to the same conditions and penalties as provided in section 40-360; and an emergency license tax of a sum equal to four percent of the gross receipts derived from such operations of the licensee within the city for services rendered to **commercial, industrial** and all other users of such service, at the same times, for the same periods, in advance, but otherwise based upon the same computations and subject to the same conditions as provided in section 40-360."<sup>8</sup>

The municipal code provision quoted above is silent as to the taxability status of mobile telecommunications service. However, as per a separate provision contained within Chapter 40 (Licenses), Article VI (Business Regulations):

"For purposes of section 40-360, telephone businesses generally, and **section 40-361**, same—emergency tax, in determining whether a particular customer or service address is residential or business, a **wireless telecommunications company** may rely upon existing customer classifications in its books and records, kept in the ordinary course of business, such as individual, customer, enterprise, business, corporate, non-residential, or government."<sup>9</sup>

Please note that the tax rate for residential users for purposes of this tax has since been reduced to zero.

To quote the relevant section of the remittance form for this tax establishing this fact:

"Residential Sales- Emergency Tax Section (1). • Under KCMO Code of Ordinances Chapter 40, Section 40-369, there is **no** emergency tax currently imposed on **residential sales gross receipts** for utility tax purposes."<sup>10</sup>

Additionally, as per the forms page of the Kansas City, Missouri municipal government website:

"Form RD-EMER is a monthly/quarterly return used to report and remit the emergency tax of 4% on the gross receipts of Electric, Gas and Telephone (Landline or **Wireless**) companies or 1.6% on the gross receipts of Steam and Heating companies. Electric, Gas, Steam and Heating companies should file Form RD-EMER on a monthly basis. Telephone companies – both Landline and **Wireless** – should file Form RD-EMER on a quarterly basis."<sup>11</sup>

Based upon these explicit guidelines, we are hereby updating our database effective with this month's release to reflect that the Kansas City, Missouri Emergency License Tax (as captured by Tax Type 37/03) is imposed upon monthly recurring charges for mobile telecommunications service as captured by the following Group & Item codes:

- Group 5006 (Cellular Service); Items 001, 002 & 011

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<sup>8</sup> Kansas City, Missouri Municipal Code § 40-361.

<sup>9</sup> Kansas City, Missouri Municipal Code § 40-361.5.

<sup>10</sup> Form RD-EMER = "Utilities License – Monthly/Quarterly Emergency Tax"; General Instructions; Section C.

<sup>11</sup> See <https://www.kcmo.gov/city-hall/departments/finance/tax-home/tax-forms>.

- Group 5025 (Cellular Monthly Service); Items 001, 002 & 017

At the same time, however, we are limiting such taxability to Customer Type 01 (Commercial) & Customer Type 02 (Industrial) given that that the Kansas City, Missouri Emergency License Tax is no longer imposed upon residential users.

## Updates to Current Telecommunications Database - System Changes Effective May 2023

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### Reinstatement of the Previous Rate for the North Carolina TRS Surcharge

Among the taxes covered in our database is the North Carolina TRS Surcharge (as captured by Tax Type 09/80). As part of our April 2023 update of rates for various regulatory surcharges, the rate for the North Carolina TRS Surcharge was increased in our system from 8 cents per access line per month to 16 cents per access line per month based upon a regulatory order issued by the North Carolina Utilities Commission which declared as follows:

“It is therefore ordered that the monthly TRS surcharge shall be increased from \$0.08 to \$0.16 per access line effective April 1, 2023, and the increase shall be reflected on all customer bills issued on or after April 1, 2023.”<sup>12</sup>

However, pursuant to petitions filed by various carriers, the North Carolina Utilities Commission has now decided to extend the date for implementation of the TRS surcharge increase to June 1, 2023.

To quote the order granting the request of these petitioners:

“On March 29, 2023, BellSouth Telecommunications, LLC, d/b/a AT&T North Carolina (AT&T) filed a Motion to Extend TRS Surcharge Effective Date to On or After June 1, 2023. AT&T asserts that given the internal steps necessary to implement the increase, AT&T cannot provide the requisite customer notification and effect the increase by April 1, 2023. AT&T requests that the Commission extend the date for implementation of the TRS surcharge increase to June 1, 2023, with customer bills on or after that date reflecting the change.

On March 30, 2023, the North Carolina Cable Telecommunications Association (NCCTA) filed a letter in support of AT&T’s motion.

Considering the foregoing, including AT&T’s petition, NCCTA’s letter, and the entire record in this proceeding, the Chair finds good cause to grant AT&T’s motion.

The date for implementation of the TRS surcharge increase is extended to no later than June 1, 2023, and customer bills on or after that date shall reflect the change.”<sup>13</sup>

Based upon this latest order, we are hereby taking the following actions in our database:

- Effective with this May 2023 release, we are now reinstating the original rate for the North Carolina TRS Surcharge (as captured by Tax Type 09/80) of 8 cents per access line per month.
- Effective with the June 2023 release, the rate for the North Carolina TRS Surcharge (as captured by Tax Type 09/80) will once again be increased to 16 cents per access line per month.

### Reinstatement of Group & Item Code 5022/002

Among the Groups covered in our database is Group 5022 (Conferencing Services). As originally configured, Group 5022 contained Item 002 which was captioned “Conference Bridging – With Transmission – Interstate”. In the interim, however, two new Items were added to Group 5022 namely:

- Item 012 = CONFERENCE BRIDGING - WITH TRANSMISSION – INTERSTATE - BRIDGE INSIDE STATE

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<sup>12</sup> “In the Matter of Telecommunications Relay Service (TRS), Relay North Carolina: Order Increasing the Telecommunications Relay Service Surcharge” Docket Number P-100, Sub-Docket 110 [2023 N.C. PUC LEXIS 365].

<sup>13</sup> “In the Matter of Telecommunications Relay Service (TRS), Relay North Carolina: Order Granting Motion to Extend TRS Surcharge Effective Date to No Later Than June 1, 2023” Docket Number P-100, Sub-Docket 110 [Order dated April 4, 2023].

- Item 018 = CONFERENCE BRIDGING - WITH TRANSMISSION – INTERSTATE - BRIDGE OUTSIDE STATE

Given that these new Items offered database users more granularity for mapping such bundled Interstate conference bridging transactions insofar as they factored in the variable of the location of the conference bridge into the taxability equation, it was decided by our team that Item 002 was now obsolete.

However, upon careful reconsideration, we have now decided to reinstate Item 5022/002 to the database effective with this mid-month release, with the qualification that such Group & Item should be selected when the location of the conference bridge is unknown or cannot be determined.

Accordingly, effective with this mid-month release, database users shall now have the following set of options for mapping transactions involving bundled Interstate conference bridging service, depending upon the location of the conference bridge:

002	<b>CONFERENCE BRIDGING - WITH TRANSMISSION – INTERSTATE</b>	Charge for conference bridging services bundled together with a charge for telephone transmission service on the host caller’s invoice. NOTE: Map to this Item when: (1) call participants are located in more than one state & (2) the location of the conference bridge used to connect participants is unknown or cannot be determined.
012	<b>CONFERENCE BRIDGING - WITH TRANSMISSION – INTERSTATE - BRIDGE <u>INSIDE</u> STATE</b>	Charge for conference bridging services bundled together with a charge for telephone transmission service on the host caller’s invoice. NOTE: Map to this Item when: (1) call participants are located in more than one state & (2) the conference bridge used to connect participants is located <u>inside</u> the state in which the host caller is located.
018	<b>CONFERENCE BRIDGING - WITH TRANSMISSION – INTERSTATE - BRIDGE <u>OUTSIDE</u> STATE</b>	Charge for conference bridging services bundled together with a charge for telephone transmission service on the host caller’s invoice. NOTE: Map to this Item when: (1) call participants are located in more than one state & (2) the conference bridge used to connect participants is located <u>outside</u> the state in which the host caller is located.

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