

Telecommunications Sales Tax Rates and Taxability

Welcome to the Telecommunications Database

This bulletin provides important information about the November 2023 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 2023

Change to the Taxability of VOIP Service for Purposes of the Indiana Universal Service Fund

Among the taxes covered in our database is the Indiana Universal Service Fund (USF) as captured by Tax Type 26/80.

Prior to this month's release, our database reflected that the Indiana USF was not imposed upon Interconnected VOIP Service

However, pursuant to a quality assurance review of governing legal sources, it is now our fresh understanding that VOIP revenues are indeed subject to assessment but only when sold by a certificated carrier (as captured by Provider Types 00, 01 & 02).

The basis of this fresh understanding is as follows:

As per an order published by the Indiana Regulatory Commission in 2007 that established the parameters of this assessment:

"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. 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.

(I) **Basis for assessments.** Assessments will be based on "net billed intrastate retail telecommunications revenue" and include the following:

(A) Assessments shall be made to each telecommunications provider based upon its monthly billed retail intrastate telecommunications revenues adjusted for prior months previously unreported retail intrastate telecommunications uncollectible."¹

Given that these instructions are silent regarding the assessment status of VOIP revenues, our tax team reached out to Solix, the third-party administrator of the Indiana USF. Initially, the response we received from the Administrator of the Indiana USF instructed as follows:

"The obligation to report to and contribute to the Indiana USF is based on the type of Certificate of Territorial Authority (CTA) the company holds in Indiana. If a carrier holds a Telecommunications CTA that indicates VoIP service as a telecommunications service then the provider would need to report and contribute to the IUSF. It is through the CTA process that the company could classify VoIP service as a telecommunications service."

In a subsequent e-mail, the administrator of the Indiana USF (i.e., Michael Tamburino) clarified his original instructions as follows:

¹ Indiana Utility Regulatory Commission Cause Number 42144 – Indiana Universal Service Fund (IUSF) Implementation Guidelines [Filed July 25, 2007].

"The inverse of the FCC Safe Harbor rate may be used. However, I wanted to clarify on the requirement to report and contribute. A VoIP provider with a Telecommunications CTA would need to report, while a VoIP provider with a VoIP CTA would not need to. It is the CTA type that determines the requirement."²

The advice given to us by Mr. Tamburino is very consistent with an order issued by the Indiana Utility Regulatory Commission in 2018 granting a Certificate of Territorial Authority to a VOIP provider by the name of Mercury Wireless. In relevant part, the order stated:

"On September 20, 2018, Mercury Wireless Indiana, LLC ("Applicant") filed with the Indiana Utility Regulatory Commission ("Commission") its Application for a Certificate of Territorial Authority ("CTA") to provide communications services, specifically telecommunications services as defined in 47 U.S.C. § 153 and described in the Application, within the State of Indiana. The Commission published notice that Applicant filed an application for a CTA to provide communications services within the State of Indiana. Absent a timely request, the Application may be granted without a hearing.

Based upon information contained in the Application and applicable law, the Commission makes the following findings:

Based upon the information provided by the Applicant in its Application, the Commission finds that a Certificate of Territorial Authority for telecommunications services, specifically broadband Internet and **interconnected voice over Internet Protocol (VoIP) services**, proposed to be offered within the State of Indiana, should be issued to the Applicant, consistent with and subject to the following findings.

The Applicant shall comply with all applicable legal requirements pertaining to the provision of the communications services authorized by this CTA, including, but not limited to, the following:

e. **Indiana Universal Service Fund.** Applicant shall pay all required assessments into the **Indiana Universal Service Fund ("IUSF")** based on the "net billed intrastate retail telecommunications revenue" pursuant to the Order in Cause No. 42144, the "Implementation Guidelines" attached to the July 25, 2007 Docket Entry issued in Cause No. 42144, and any subsequently issued IUSF-related requirements, rules, or procedures.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that: Subject to the Findings set forth in this Order, the Applicant Mercury Wireless Indiana, LLC is issued a Certificate of Territorial Authority as a Communications Service Provider to provide **telecommunications services**, specifically broadband Internet and **interconnected voice over Internet Protocol (VoIP)**, as requested in the Application that is the subject of this Order."³

Accordingly, based upon the second response from Michael Tamburino quoted above, we are now updating our database effective with this month's release to reflect that Intrastate VOIP revenues are subject to the Indiana USF while at the same time limiting such taxability only to Provider Types 00 (ILEC), 01 (IXC) and 02 (CLEC) since these Provider Types correspond to certificated carriers.

Please note that the same distinction between the taxable status of certificated carriers versus the non-taxable status of non-certificated carriers [i.e., Provider Types 03 (VOIP), 04 (ISP) and 05 (Wireless)] regarding Intrastate VOIP revenues for purposes of the Indiana USF applies to the Illinois USF as the two states have established identical assessment policies in connection with the sale of VOIP service.

Finally, please note that the Tax Type & Tax Cat combination of 26/80 shall be applied to the bundled Items in Group 5032 (Fixed VOIP) and Group 5044 (Nomadic VOIP) – namely, Items 001-005, 010, 012-015, 018, 021 & 023 via a Percent Taxable value of 35.1% which represents the inverse FCC Safe Harbor ratio for Intrastate VOIP revenues - i.e., the full Indiana USF Percent Taxable value of 100% - 64.9% (which is the FCC Safe Harbor ratio for Interstate VOIP revenues).

Conversely, the full Indiana USF Percent Taxable value of 100% corresponding to the standard Indiana USF rate of 2.26%) shall be applied to Item 006 (Usage-Based Charges / Intrastate-IntraLATA) and Item 007 (Usage-Based Charges / Intrastate-InterLATA) since these two Items represent actual charges for Intrastate VOIP service.

Change to the Taxability of Wireless Service for Purposes of the Wichita, Kansas Local Franchise Fee

² Email response from Michael Tamburino, Staff Member – Solix, Inc. dated October 19, 2023.

³ "Application of Mercury Wireless Indiana for a Certificate of Territorial Authority to Provide Communications Service" Cause Number 45143 (2018 Ind. PUC LEXIS 245) [Approved November 7, 2018].

Among the taxes covered in our database is the Wichita, Kansas Local Franchise Fee (as captured by Tax Type 43/80). Prior to this month's release, our database reflected that this local franchise fee was not imposed upon wireless telecommunication service. However, pursuant to a quality assurance review of governing legal sources, it is now our fresh understanding that charges for wireless telecommunication service are indeed subject to taxability based upon the following set of provisions contained in the Wichita code:

As a starting point, the code provision that establishes the Wichita Franchise Fee recites as follows:

"Every franchisee shall pay to the city as compensation for the use of the right-of-way pursuant to any franchise granted under this chapter the following franchise fees to the city: Effective July 1, 2002 and thereafter, all franchisees providing communications services either originating or terminating within the city shall pay 5% of gross receipts."⁴

In turn, the term "gross receipts" is defined to mean: "all revenues received directly or indirectly by a franchisee or its affiliates for communications services that either originate or terminate within the corporate limits of the city, and all revenue derived from the use of facilities."

The same provision adds: "For illustration purposes only, such gross receipts shall specifically include all revenue of a franchisee derived from the following: **Cellular, PCS or other mobile revenue** attributable to franchisee's use of right-of-way (such as interconnect fees, or cell sites connections)."⁵

Based upon this sequence of provisions, we are hereby updating our database effective with this month's release to reflect that the Wichita, Kansas Local Franchise Fee (as captured by Tax Type 43/80) is imposed upon the following Group & Item codes: Group 5006 = Cellular Service (Group-Level); Group 5025 = Cellular Monthly Service (Group-Level) & Group 5026 = Cellular Toll Service (Items 001-007).

Updates to Current Telecommunications Database - System Changes Effective November 2023

Overhaul of the Oklahoma State and Local 911 Fees

Among the taxes covered in our database is the Oklahoma 911 Wireless Telephone Fee as captured by Tax Type 06/06 & Tax Type 06/V1. Tax Type 06/06 only applied to postpaid wireless phone service while Tax Type 06/V1 only applied to VOIP telephone service.⁶

However, pursuant to enacted legislation⁷, this surcharge is now being expanded to include both landline and VOIP phone service, effective November 1st.

To quote the text of the amended statutory provision reflecting this new scope of taxability:

"There shall be imposed a 9-1-1 telephone fee as follows:

1. One Dollar and twenty-five cents (\$1.25) monthly on each wireless telephone connection and other wireless communication device or service connection with the ability to dial 9-1-1 for emergency calls;
2. One Dollar and twenty-five cents (\$1.25) monthly on each service with the ability to dial 9-1-1 for emergency calls, including **landline**; and

⁴ Wichita Municipal Code § 3.93.270.B.

⁵ Wichita Municipal Code § 3.93.040.

⁶ Although the monthly fee amount for both variations of the state 911 fee in Oklahoma was 75 cents, Tax Type 06/06 (Wireless) featured a Unit Type code of '23' (Per Telephone Number) while Tax Type 06/V1 (VOIP) featured a Unit Type code of '00' (Access Line).

⁷ Oklahoma House Bill 1590 (2023).

3. One Dollar and twenty-five cents (\$1.25) on each prepaid wireless retail transaction occurring in this state.”⁸

Additionally, the statute⁹ that authorized municipal governments in Oklahoma to impose a local 911 fee on landline and VOIP phone service is now being repealed, effective November 1st based upon that same legislation.

To quote a bulletin published by the Oklahoma 911 Management Authority summarizing these legislative changes:

“The “Hayden Fleming Memorial Ad” (Oklahoma House Bill 1590 (HB1590)) was signed into law during the 2023 legislative session and will go into effect on November 1st 2023. This bill changes 9-1-1 fee collections for all devices capable of calling 9-1-1.

This letter explains the impact of the bill and provides direction on administering the 9-1-1 fee starting on November 1st, 2023.

Below is a breakdown of the changes pertinent to the communications industry.

1. State Statutes §63-2814 and §63-2815 will be REPEALED (removed). Those sections included the language that authorized local public agencies to assess a landline telephone fee which ranged between 3% and 15% of the tariffed or baseline telephone bill. Effective November 1, 2023, the collection and disbursement to those local public agency fees will no longer be required by law.

2. Effective November 1, 2023, State Statute §63-2865, as changed by HB1590, will require an assessment of one dollar and twenty-five cents (\$1.25) for the following devices and or services:

a. Monthly for each wireless telephone connection and other wireless communication device or service connection with the ability to dial 9-1-1 for emergency calls;

b. Monthly for each service with the ability to dial 9-1-1 for emergency calls, including landline and VoIP;

c. Each prepaid wireless retail transaction occurs in this state. (transaction is defined under State Statute §63-2865.B et seg)

3. Effective November 1, 2023, The Oklahoma Tax Commission will be the collection point for ALL 9-1-1 fees in the State of Oklahoma. OTC will modify the current “Wireless, VoIP, and Prepaid” form to reflect the changes listed in HB1590; and two forms will be made available by OTC for 911 fee collections, PWF-20013-A and PWF-20013-B.

a. Collections for Wireless, VOIP, and Prepaid 9-1-1 services that are billed to the customer on or before October 31, 2023, will be remitted to the Oklahoma Tax Commission using form PWF-200013-A.

b. Landline 9-1-1 fees billed to the customer on or before October 31, 2023, will continue to be billed and collected at the current rate and collections will be remitted to the local public Agency’s 9-1-1 center.

c. Collections for wireless, VOIP, landline, and prepaid wireless 9-1-1 fees billed to the customer on or after November 1st, 2023, will be billed at the new rates and remitted to the Oklahoma Tax Commission using PWF-20013-B.”¹⁰

Since landline telephone services, wireless telephone services, and VOIP services will now all be subject to the same State 911 fee, we are now reconfiguring the Oklahoma State 911 Fee by replacing the existing Tax Type & Tax Cat combinations of 06/06 and 06/V1 with a brand new Tax Type & Tax Cat combination of 06/80. Accordingly, Tax Types 06/06 and 06/V1 are now being expired from our database.

Meanwhile, since the statute authorizing municipal governments in Oklahoma to impose a local 911 fee on landline and VOIP phone service is now being repealed, we are likewise deleting all existing records that reflected such local surcharges (as captured by tax Type 33/25).

⁸ 63 Oklahoma Statutes § 2865.A.

⁹ 63 Oklahoma Statutes § 2814.

¹⁰ Letter captioned “Oklahoma 9-1-1 Fee Changes” [published September 25, 2023].

Additionally, please note that the rate for the Oklahoma State 911 Fee (which as explained above will now be captured in our database as Tax Type/Tax Cat 06/80) will be increased from \$0.75 to \$1.25 per month.

Finally, the rate for the Oklahoma State Prepaid Wireless 911 Fee (which is currently captured in our database as TaxType/TaxCat 06/TS) will also be increased from \$0.75 to \$1.25 per each prepaid wireless retail transaction.

Provisions of the reconfigured Oklahoma State 911 Surcharge

SHOWN ON CUSTOMER'S BILL AS: "OK 911 TELEPHONE FEE"

Rate – \$1.25 per month.

Pass-through of the Fee to Customers – PASSFLAG = 1 (Required)

Level of Taxation - Tax is on the State level

Tax-type – 06

Tax-cat – 80

Base-type – 06

Effective date = November 1, 2023

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