

Excise Tax Advisory

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Taxability of Telecommunications Support Payments

Purpose

This Excise Tax Advisory (ETA) addresses the taxability of telecommunications support payments and miscellaneous fees received by telecommunications service providers. While this is an area that may evolve depending on federal and state regulatory requirements, the ETA provides a framework for understanding how these types of payments are taxed under Washington's business and occupation (B&O) tax, retail sales tax, and the 911 and 988 excise taxes. This ETA does not address the tax treatment of support payments received for providing internet access.

Taxability of telecommunications support payments

Examples Where Service and Other Activities B&O Tax Applies

Support payments received by carriers that are not directly tied to a sale of telecommunications services, are generally subject to the service and other activities B&O tax. Examples of programs that generate this type of income are:

- The Washington Universal Communications Service Program established by RCW 80.36.650; and
- The federal High Cost Loop, which is a program under the federal Universal Service Fund.

These programs provide support payments to qualifying telephone companies that serve high-cost areas, thereby ensuring that the residents of these regions have access to services and rates that are reasonably comparable to urban areas. The qualifying telephone companies receive support payments in exchange for fulfilling all the requirements of an Eligible Telecommunications Carrier within the covered area.

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The state of Washington or the Universal Service Administrative Company (USAC)¹ provide these support payments to carriers. Once the eligible support amounts are determined (e.g., based on the carrier's costs), the money is distributed without regard to a particular sales transaction. Rather, the payments are intended to defray costs of doing business that might otherwise impact the amounts that carriers charge for retail and wholesale services.

Because of the indirect relationship between the support payments received by the carrier and the amounts a carrier may charge its customers for telecommunications services, the payments do not constitute "gross proceeds of sales" from the sale of telecommunications services. See RCW 82.04.070 defining "gross proceeds of sales."

Instead, these support payments are subject to tax under the service and other activities B&O classification because they represent income from business activities that are not otherwise taxable under a different classification.

Examples Where Wholesaling B&O Tax Applies

Local exchange carriers may receive payments from revenue pools in exchange for originating or terminating calls within the local loop (e.g., the last mile). This activity is considered the sale of telecommunications services to other carriers at wholesale. Wholesaling B&O tax applies to support payments of this type. See generally RCW 82.04.270.

Access Fees Administered Through the NECA

An example where payments from a revenue pool are considered compensation for wholesale sales, is access fees administered by the National Exchange Carrier Association (NECA) for local exchange carriers. The NECA revenue pool includes payments from interexchange carriers, via rates and tariffs, in exchange for origination or termination services by local exchange carriers. Under this program, the local exchange carriers are receiving payments from the NECA pool as compensation for permitting access to their local exchange network and facilities.

These access fee payments are directly tied to telecommunication services the local exchange carriers are providing to interexchange carriers, who resell the services as part of the bundle of telecommunications services provided to their customers. The receipt of access fee payments by the local carriers represents a wholesale transaction subject to tax under the wholesaling B&O classification.

Example Where Retailing B&O Tax, Retail Sales Tax, and 911 and 988 Excise Taxes Applies

¹ USAC is an independent, not-for-profit corporation. In 1997, the Federal Communications Commission designated the USAC as the administrator of the federal Universal Service Fund programs.

Retailing B&O tax and retail sales tax applies to funds received by carriers as direct support payments for credits or discounts provided to subscribers on their telephone bills. For example, a telecommunications company may provide a credit to a low-income subscriber and then later receive a payment for the credit from a fund or program. In that circumstance, the telecommunications company is being compensated for its sale of telecommunications services to a consumer. Accordingly, the support payments are subject to retailing B&O tax and retail sales tax. In addition, carriers must collect and remit the 911 and 988 excise taxes. See RCW 82.14B.040 and RCW 82.86.030 for additional information regarding collection of 911 excise tax, and 988 excise tax, respectively.

Federal Lifeline Program²

The federal Lifeline program, administered by the USAC, allows eligible consumers to receive a reduced rate on either their mobile or home phone service. Under the Lifeline program, Eligible Telecommunications Carriers provide telecommunications services directly to qualifying consumers in exchange for reimbursements from the USAC. Reimbursement payments from the USAC to carriers participating in the Lifeline program are gross proceeds from a retail sale of telecommunications services subject to retailing B&O tax. The reimbursement payments are also subject to 911 and 988 excise taxes.

However, reimbursement payments from the USAC to carriers participating in the Lifeline program are not subject to retail sales tax. *See Assurance Wireless USA, LP v. Dept' of Revenue*, 544 P.3d 471 (2024). In *Assurance Wireless*, the Washington Supreme Court held that the USAC is an instrumentality of the federal government and is not liable for retail sales tax as the “buyer” of the service.

A carrier participating in the Lifeline program must collect and remit retail sales tax on telecommunications service sold directly to the Lifeline subscriber, such as the sale of extra minutes or extra data.

² On March 31, 2016, the Federal Communications Commission adopted an order commonly referred to as the 2016 Lifeline Order. That order permits Lifeline subscribers to apply lifeline subsidy payments to broadband service. The guidance provided in this ETA only applies to support payments for non-broadband.