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# States Target Cell Phones for Stealth, Burdensome Taxes

## *Nebraska Consumers Face Highest Rates; Average Consumer Pays 16% in Cell Taxes and Fees*

**By**
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The number of U.S. cell phone subscribers has grown significantly in recent years, from 55 million in 1997 to 292 million in 2010.[1] That period has also seen a fall in landline telephones (there are now 50 million), and 2007 marked the first year that Americans spent more on cell phones than on landlines.[2] This trend toward cell phones has not gone unnoticed by state and local governments, which have targeted wireless services for higher taxes.

The average U.S. wireless consumer pays taxes and fees of 16.26 percent, of which state-local charges average 11.21 percent, according to a newly released study that identifies and calculates wireless taxes and fees.[3] Twenty-three states have average state-local wireless taxes and fees in excess of 10 percent, and taking into account the infamous federal telephone excise tax (dating to the Spanish-American War and partly repealed in 2006), some cell phone subscribers pay more than 20 percent in taxes. (See Table 1 for a full list.)

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[1] THE WORLD FACTBOOK (2010).
[2] "Cell phone spending surpasses land lines in U.S.," *Associated Press* (Dec. 18, 2007), http://articles.moneycentral.msn.com/Investing/Extra/CellPhoneSpendingSurpassesLandLinesinUS.aspx. *See also* "Spending on Cell Phone Services Rapidly Approaching That of Residential Phone Services," U.S. Department of Labor Bureau of Labor Statistics, at http://www.bls.gov/cex/cellphones.htm (Dec. 13, 2007);
[3] Scott Mackey, "A Growing Burden: Taxes and Fees on Wireless Service," KSE Partners LLP (Feb. 14, 2011). http://www.ksefocus.com/wordpress-content/uploads/2011/02/2010-Tax-Study-Final-Tax-Notes-PDF.pdf
Data is provided from FCC studies and the wireless industry, and a methodology developed by the Council on State Taxation is used to calculate averages.

**Table 1: Taxes and Fees on Wireless Service, July 2010**

| State | Average State-Local Tax Rate | Combined Federal-State-Local Rate | Rank |
|---|---|---|---|
| Alabama | 7.45% | 12.50% | 38 |
| Alaska | 6.69% | 11.74% | 42 |
| Arizona | 11.97% | 17.02% | 14 |
| Arkansas | 11.07% | 16.12% | 16 |
| California | 10.67% | 15.72% | 19 |
| Colorado | 10.40% | 15.45% | 22 |
| Connecticut | 6.96% | 12.01% | 41 |
| Delaware | 6.25% | 11.30% | 45 |
| Florida | 16.57% | 21.62% | 4 |
| Georgia | 8.57% | 13.62% | 29 |
| Hawaii | 7.75% | 12.80% | 37 |
| Idaho | 2.20% | 7.25% | 48 |
| Illinois | 15.85% | 20.90% | 5 |
| Indiana | 9.84% | 14.89% | 23 |
| Iowa | 7.91% | 12.96% | 35 |
| Kansas | 13.34% | 18.39% | 9 |
| Kentucky | 10.42% | 15.47% | 21 |
| Louisiana | 6.28% | 11.33% | 44 |
| Maine | 7.16% | 12.21% | 40 |
| Maryland | 12.23% | 17.28% | 11 |
| Massachusetts | 7.81% | 12.86% | 36 |
| Michigan | 7.27% | 12.32% | 39 |
| Minnesota | 9.38% | 14.43% | 26 |
| Mississippi | 9.08% | 14.13% | 27 |
| Missouri | 14.23% | 19.28% | 7 |
| Montana | 6.03% | 11.08% | 47 |
| Nebraska | 18.64% | 23.69% | 1 |
| Nevada | 2.08% | 7.13% | 49 |
| New Hampshire | 8.18% | 13.23% | 32 |
| New Jersey | 8.87% | 13.92% | 28 |
| New Mexico | 10.52% | 15.57% | 20 |
| New York | 17.78% | 22.83% | 3 |
| North Carolina | 9.43% | 14.48% | 25 |
| North Dakota | 10.68% | 15.73% | 18 |
| Ohio | 7.95% | 13.00% | 33 |
| Oklahoma | 10.74% | 15.79% | 17 |
| Oregon | 1.81% | 6.86% | 50 |
| Pennsylvania | 14.08% | 19.13% | 8 |
| Rhode Island | 14.62% | 19.67% | 6 |
| South Carolina | 9.52% | 14.57% | 24 |
| South Dakota | 12.02% | 17.07% | 13 |
| Tennessee | 11.58% | 16.63% | 15 |
| Texas | 12.43% | 17.48% | 10 |
| Utah | 12.16% | 17.21% | 12 |
| Vermont | 8.50% | 13.55% | 30 |
| Virginia | 6.56% | 11.61% | 43 |
| Washington | 17.95% | 23.00% | 2 |
| West Virginia | 6.23% | 11.28% | 46 |
| Wisconsin | 8.34% | 13.39% | 31 |
| Wyoming | 7.94% | 12.99% | 34 |
| District of Columbia | 11.58% | 16.63% | – |

Note: The local rate is calculated as the average of the tax in the largest city and the capital city.
Source: Scott Mackey, KSE Partners, LLP, based on Methodology
from Council on State Taxation*, 50-State Study and Report on Telecommunications Taxation*, May 2005.

## Cell Taxes and Fees Are Often Hidden, Enabling Excessive Rates

States favor the taxes because they can raise revenue in a relatively hidden way. Texas even sued Sprint because the company listed a state tax as a line-item in its bill, rather than hiding it from customers.[4] Utah uses a wireless fee to fund its poison control centers--a government service that benefits the general public regardless of cell phone ownership or usage. Six states (Kentucky, Indiana, North Dakota, Pennsylvania, Rhode Island, and South Dakota) impose both sales taxes on wireless customers and gross receipts taxes on wireless service providers, both of which are ultimately borne by customers. Universal Service Fund (USF) charges are modest in most states but particularly excessive in Nebraska and Kansas, where they exceed 4 percent of the wireless bill.

Because each state and many localities can impose cell phone taxes, and because they can be imposed as a percentage or as a flat rate, there are numerous taxes which vary widely. Researchers have found it difficult to create a database of cell phone taxes, and cell phone companies have encountered similar problems in calculating the taxes. This can be a serious problem for cell phone businesses, because they collect the taxes from subscribers and can be held legally accountable for any mistakes—both over-collection and under-collection.

As a result, cell phones are taxed at a much higher level than other consumer items, even as much as or more than alcohol or cigarettes. In Nebraska, the combined federal-state-local average rate is 23.69 percent, and in four other states (Florida, Illinois, New York, and Washington), it exceeds 20 percent. Notably among local jurisdictions, Baltimore, Maryland imposes a $4 per line per month tax on wireless users, on top of federal and state charges. Nearby Montgomery County, Maryland imposes a $3.50 per line per month tax. These per line charges are especially burdensome on low-priced "family share" plans.

Scholars from across the political spectrum have criticized telecom taxes as burdensome, regressive, and stifling consumer choice.[5] In response to this problem, legislation entitled the Cell Phone Tax Moratorium Act that would restrict excessive state and local wireless taxes has been regularly introduced in Congress.

## Consumers Should Be Aware that Cell Phones Are Taxed in the "Place of Primary Use"

Even if applying the rate and collecting the tax were easy, determining which tax should apply to a particular cell phone user remains difficult. Which state should be able to tax a Florida resident who buys a cell phone there, moves to Idaho, but calls friends in Georgia more than anyone else?

Attempting to address this problem in an increasingly mobile world, Congress passed the Mobile Telecommunications Sourcing Act of 2002, which stated that a cell phone subscriber is liable for cell phone taxes only in his or her "place of primary use."[6] The "place of primary use" is determined by the cell phone company based on the address provided by the subscriber, and cannot be overruled by a state taxing authority.[7]

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[4] See Andrew Chamberlain, "What 'Economic Incidence' of Business Taxes Looks Like," Tax Foundation Tax Policy Blog, Jan. 18, 2007, http://www.taxfoundation.org/blog/show/2158.html; "Texas AG Sues Sprint Nextel Unit For Deceptive Billing," *Kansas City Business Journal*, Feb. 6, 2007, http://www.bizjournals.com/kansascity/stories/2007/02/05/daily21.html.

[5] *See, e.g.*, Steven J. Blumberg, "Wireless Substitution: Early Release Estimates from the National Health Interview Survey, July-December 2009," *Centers for Disease Control* (May 12, 2010), http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201005.pdf (finding low-income populations rely more heavily on wireless services); Katherine Barrett and Richard Greene, Pew Center on the States, "Growth & Taxes: Why Outdated State Tax Systems Undercut Economic Vitality and What States Can Do About It," *Governing Magazine* (Jan. 18, 2007), http://www.governing.com/articles/1taxmain.htm; David Tuerck, Paul Bachman, Steven Titch, and John Rutledge, "Taxes and Fees on Communication Services," The Heartland Institute and Beacon Hill Institute at Suffolk University (Apr. 2007), at http://www.heartland.org/article.cfm?artId=21102.

[6] 4 U.S.C. § 122(a)(2).

[7] *Id.* See also 4 U.S.C. § 124(8).

## Conclusion

Making cell phone calls and using wireless services for additional purposes may be getting easier, but paying cell phone taxes is not. State and local governments should not single out one product for stealth tax increases, as they are doing with wireless services. Such actions distort market decisions and risk slowing investment that contributes to economic growth. Cell phone users are overtaxed relative to consumers of other goods, and at risk of double taxation. Finally, the wide number of taxing authorities and the wide variety in rates makes tracking problematic and burdensome.

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[8] See*, e.g.*, Scott Wooley, "How to Duck Cell Phone Taxes," *Forbes*, Jun. 7, 2005, http://www.forbes.com/2005/06/06/cz_sw_0606cellphone.html.
[9] *Id.*