

## Emergency Broadband Benefit Program

| State          | Calculate tax on the sales price <u>prior</u> to subtracting the reimbursement the retailer receives from the Federal Government | Calculate tax on the sales price <u>after</u> subtracting the reimbursement the retailer receives from the Federal Government | Notes      |
|----------------|--|---|------------|
| Arkansas       |  |   |            |
| Georgia        |  |   |            |
| Indiana        |  | X   | See Note 1 |
| Iowa           |  |   |            |
| Kansas         | X  |   |            |
| Kentucky       | X  |   | See Note 2 |
| Michigan       | X  |   |            |
| Minnesota      | X  |   | See Note 3 |
| Nebraska       | X  |   |            |
| Nevada         | X  |   |            |
| New Jersey     | X  |   | See Note 4 |
| North Carolina | X  |   |            |
| North Dakota   |  | X   |            |
| Ohio           | X  |   | See Note 5 |
| Oklahoma       | X  |   | See Note 6 |
| Rhode Island   | X  |   |            |
| South Dakota   |  | X   |            |
| Tennessee      | X  |   |            |
| Utah           |  | X   |            |
| Vermont        |  |   |            |
| Washington     | X  |   | See Note 7 |
| West Virginia  |  | X   |            |
| Wisconsin      |  | X   | See Note 8 |
| Wyoming        | X  |   |            |
|                |  |   |            |

# Emergency Broadband Benefit Program

## Notes:

- 1 Any subsidy the retailer receives for reimbursement under this program must first be applied toward any non-taxable services.
  - 2 According to the provisions of KRS 139.010(15)(b) the receipts from the EBB program to providers meet the definition of gross receipts from a third party that are part of consideration for the tangible personal property, digital property or services sold. Of course, the tax should be charged only on the portion of the reimbursement applied to the taxable components of the customer's bill.
  - 3 <https://www.revenue.state.mn.us/sites/default/files/2023-01/FS167.pdf>
  - 4 <https://www.state.nj.us/treasury/taxation/pdf/pubs/sales/anj9.pdf>
  - 5 Ohio's definition of "price" in R.C. 5739.01(H)(1)(b).
  - 6 [Letter Ruling 07-219 \(oklahoma.gov\)](#)
  - 7
- The \$50 monthly credit to consumers for broadband access, as described, appears to be part of the retail sale of telecommunications, tangible personal property, and potentially competitive telephone services. It also appears the credit may possibly be applied to the sale of Internet access.
  - The \$100 one-time credit for device purchases, as described, appears to be exclusively available for the retail sale of tangible personal property.
  - Retail tax applies to the selling price of telecommunications services, tangible personal property, and competitive telephone services to consumers. RCW 82.04.065, 82.04.050, 82.08.010, and 82.08.020. For items subject to retail sales tax, the same rationale in ETA 3205 and Federal Lifeline Program seems to apply here, "The activity engaged in for which compensation is received is the sale of telecommunications services to a consumer. Accordingly, the support payments received by the carriers are receipts paid in exchange for the sale of telecommunications services. These types of support payments are subject to retailing B&O and retail sales tax if the telecommunications service is provided to the end consumer." The Definition of "selling price" supports this result. See RCW 82.08.010(1) and (1)(c) and [ETA 3205.2017](#). This result would be the same whether the amounts are paid as consideration for the sale of telecommunications services, tangible personal property, or competitive telephone services.
  - While the survey questions concern sales and/or use tax only, the reimbursement will also be subject to Washington business and occupation (B&O) tax under the retailing classification for the retailer making retail sales of telecommunications services, tangible personal property, or competitive telephone services. See RCW 82.04.250.
  - Reimbursements that are not directly related to a retail sale may be subject to Washington B&O tax under another B&O tax classification. See Chapter 82.04 RCW. From the examples provided, it appears that the federal amounts may be used to pay for activities not subject to retail sales tax such as Internet access, which is subject to Washington's B&O taxes under the services and other activities tax classification. See RCW 82.04.290. With respect to these activities or other activities that are not considered "retail sales", if sold on a stand-alone basis, the federal amounts would be included in the taxable gross income of the seller under the appropriate B&O tax classification and no retail sales tax would be due.

## Emergency Broadband Benefit Program

- It appears the federal amounts may be applied to the purchase of distinct and identifiable products as part of a package in which the product prices may either be itemized or potentially not itemized. If the products are part of “bundled transaction” as defined in RCW 82.08.190, including meeting the requirement that products are sold for one-nonitemized price, the tax treatment must be consistent with RCW 82.08.195. That is, the full selling price of the bundled transaction is subject to retail sale tax and retailing B&O, unless the seller is able to unbundle under RCW 82.08.195(5).
- These responses are based on limited facts and generalized information not identifying specific actual product offerings, and thus, to obtain specific guidance that can be relied upon, taxpayers should seek a letter ruling from the Washington Department of Revenue that states the specific facts, including transaction, product offering, and applicable federal program.

8 The portion paid/reimbursed directly to the retailer from the federal government is being treated as though it is a sale to the federal government and therefore that portion of the sale is not taxable. This is consistent with how Wisconsin handles the digital-to-analog converter box coupon program in [Wisconsin Tax Bulletin 155](#) (page 29), SNAP benefits in [sec. Tax 11.51\(5\)](#), Wis. Adm. Code, Medicare claims in [sec. Tax 11.45\(6\)](#), Wis. Adm. Code, and American Red Cross disbursing orders in [Wisconsin Tax Bulletin 145](#) (page 20). In all cases, the reimbursement or payment must be made directly from the federal government to the retailer in order for the sale to be an exempt sale to the federal government. If the federal government reimburses the purchaser, rather than the retailer, the sales tax would be figured on the sales price prior to subtracting the reimbursement.