

## Public Safety Communications Surcharge

Chapter 56 of the Laws of 2009 repealed County Law, section 309, *State Wireless Communications Service Surcharge*. The surcharge was replaced with a new Tax Law section: Article 9, section 186-f, *Public Safety Communications Surcharge*. Chapter 56 also amended Article 9, section 186-e.8 to provide that the public safety communications surcharge and any administrative fees retained by a wireless communications service supplier for collecting the surcharge will not be included in gross receipts when the supplier calculates the excise tax on telecommunication services imposed under Article 9, section 186-e. These amendments are effective September 1, 2009.

### Continuing provisions

The following are the provisions that were imposed under County Law section 309 that are now imposed under Tax Law section 186-f.

A monthly \$1.20 fee is imposed for **each** device used to access wireless communications services. The surcharge is to be collected by wireless communications service suppliers from their customers. Therefore, wireless communications service plans that include multiple devices are subject to the surcharge on **each** device regardless of the pricing structure for the plan.

The surcharge applies to all wireless communications services if the wireless communications customer's *place of primary use* is in New York State. The *place of primary use* is the primary business street address or primary residential street address of the customer, within the licensed service area of the wireless communications service provider.

A *wireless communications service* is any commercial mobile service, as that term is defined in section 332(d) of Title 47 of the United States Code, as amended from time to time, including, but not limited to, all broadband personal communications services, wireless radio telephone services, geographic-area specialized and enhanced specialized mobile radio services, and incumbent-wide area specialized mobile radio licensees, which offer real-time, **two-way** voice or data service that is interconnected with the public switched telephone network or otherwise provides access to emergency communications services.

A *wireless communications device* is any equipment used to access a wireless communications service. Examples of wireless communications devices on which the surcharge is imposed include cellular telephones, two-way beepers, and other devices (for example, PDAs and handheld or laptop computers, etc.) that have two-way wireless communications capabilities over a public switched network.

Examples of devices on which the surcharge is **not** imposed include one-way beepers, walkie-talkies, and medical lifeline services.

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Wireless communications service suppliers providing service in New York State must add the surcharge to bills of every customer whose place of primary use is in New York State. The surcharge must be separately stated on the bill as a single charge; for example, \$1.20 for a plan with one device, \$2.40 for a plan with two devices, \$3.60 for a plan with three devices, etc.

Wireless communication service suppliers must report and remit collections to the Tax Department on a quarterly basis. The quarters and the corresponding due dates are as follows:

December 1 - February 28 (29): due March 15  
March 1 - May 31: due June 15  
June 1 - August 31: due September 15  
September 1 - November 30: due December 15

If a customer has paid the surcharge to its wireless communications service supplier, the customer has no further liability for the charge. However, if the supplier fails to collect the surcharge from the customer, the customer must report and pay the surcharge directly to the Tax Department.

New York State may purchase wireless communications services exempt from the imposition of the surcharge. The United States of America and any of its agencies and instrumentalities, the United Nations, diplomatic missions and personnel, and any nonprofit/casualty insurance company organized under Insurance Law section 6703 are also exempt from the surcharge when they purchase wireless communications services.

Other entities that may be exempt from the payment of other taxes and fees (for example, the state and local sales and use taxes) are subject to and liable for payment of the surcharge. For example, organizations that have established exemption under section 501(c)(3) of the Internal Revenue Code; veterans' organizations; HMOs; or rural electric cooperatives, are not exempt from paying the wireless surcharge.

### **New provisions**

The following are the new provisions imposed under Tax Law section 186-f:

- The surcharge was renamed the Public Safety Communications Surcharge. Note: Form WCS-1 (or Form WCS-1-MN), *State Wireless Communications Service Surcharge*, has also been renamed: it is now WCS-1 (or Form WCS-1-MN), *Public Safety Communications Surcharge*.
- Tax Law Article 27 provisions governing penalties, interest, refunds, and other corporate tax procedures are now applicable to the surcharge.

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- Wireless communication service suppliers must refer to the Public Safety Communication Surcharge by name on bills provided to customers.
- Wireless communication service suppliers are allowed to retain an administrative allowance of 1.166% of total collections, but only if they timely file the required return and timely remit payment of the surcharge.
- Wireless communication service suppliers are required to collect and retain the name and address of wireless customers with a primary place of use in New York that refuse to pay the surcharge, and the cumulative amount of surcharge remaining unpaid. This information must be provided to the Tax Department upon request.
- Under new Tax Law section 186-f, New York State agencies, instrumentalities, and political subdivisions, such as authorities and commissions; public corporations such as industrial development agencies or authorities (IDAs); political subdivisions such as counties and cities, villages, towns, school districts, fire districts, and boards of cooperative educational services, may now purchase wireless communications services exempt from the imposition of the surcharge. Under County Law 309, those entities were exempt from the surcharge only if they participated with the New York State Police in providing wireless 911 emergency services.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.