

**New York State Department of Taxation and Finance**  
**Office of Tax Policy Analysis**  
**Technical Services Division**

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**Application of Telecommunications Excise Tax to VoIP and Wireless VoIP**

The Tax Department has received inquiries as to whether telecommunication services using Voice over Internet Protocol (VoIP) and Wireless VoIP are subject to the New York telecommunications excise tax.

Tax Law section 186-e imposes a telecommunications excise tax on gross receipts from (1) intrastate telecommunication services; (2) interstate and international telecommunication services that either originate or terminate in New York and are charged to a service address in New York (the entire gross receipt in such case is subject to tax); (3) private telecommunication services attributable to New York; and (4) mobile telecommunications service provided by a home service provider where the customer's primary place of use is within New York. See Tax Law § 186-e.2(a). *Telecommunication services* are defined as "telephony or telegraphy, or telephone or telegraph service, including, but not limited to, any transmission of voice, image, data, information and paging, through the use of wire, cable, fiber-optic, laser, microwave, radio wave, satellite or similar media or any combination thereof and shall include services that are ancillary to the provision of telephone service (such as, but not limited to, dial tone, basic service, directory information, call forwarding, caller-identification, call-waiting and the like) and also include any equipment and services provided therewith." Tax Law § 186-e.1(g).

Mobile telecommunications service is defined for purposes of the telecommunications excise tax by Tax Law section 1101. See Tax Law § 186-e.1(h). Section 1101 adopts the definition of *mobile telecommunications service* in the federal Mobile Telecommunications Sourcing Act (4 USC § 124(7)) (MTSA). The MTSA defines *mobile telecommunications service* to mean "commercial mobile radio service" as defined by section 20.3 of title 47 of the Code of Federal Regulations, as in effect on June 1, 1999. 47 CFR 20.3 (63 FR 2637, January 16, 1998), as in effect on such date, provides:

A mobile service that is (A)(I) provided for profit, i.e., with the intent of receiving compensation or monetary gain; (II) an interconnected service; and (III) available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or (B) the functional equivalent of such a mobile service described in clause (A) of this subparagraph.

See also Tax Law § 1101(b)(25)(i). An interconnected service is a service that is interconnected with the public switched network and "gives subscribers the capability to communicate to or receive communication from all other users on the public switched network." See 47 CFR 20.3 (63 FR 2637, January 16, 1998).

Both VoIP and Wireless VoIP service enable the user to make and receive telephone calls. VoIP involves the transmission of a digitized voice signal over some portion of the Internet backbone. Wireless VoIP involves the same type of digital voice transmission over the Internet backbone, but the user accesses the Internet using either Wireless Fidelity (Wi-Fi), Wireless Interoperability for Microwave Access (WiMAX), or similar means, which utilize radio

wave and/or microwave transmission from the user to a network access point. Both VoIP and Wireless VoIP involve the “transmission of voice . . . through the use of wire, cable, fiber-optic, laser, microwave, radio wave, satellite *or similar media or any combination thereof.*” Tax Law section 186-e.1(g) (emphasis supplied). Accordingly, such services are within the meaning of *telecommunication services* for purposes of the telecommunications excise tax. The use of the Internet or Internet routing protocols for transmission of all or part of the call does not change this result. Gross receipts from VoIP or Wireless VoIP telecommunications service are subject to the telecommunications excise tax if the calls are intrastate (originate *and* terminate in New York) or if the calls originate *or* terminate in New York and are charged to a service address in New York. See Tax Law § 186-e.2(a)(1), (2). *Service address* generally means the location of the equipment from which the telecommunication is originated or at which the telecommunication is received from the provider of telecommunication services. See Tax Law § 186-e.1(f).

In addition, VoIP and Wireless VoIP may constitute a mobile telecommunications service. If such services are within the definition of mobile telecommunications service in Tax Law § 1101(b)(24), they may be subject to the telecommunications excise tax as a mobile telecommunications service under Tax Law § 186-e.2(a)(4), but would not be taxable as telecommunication services under section 186-e.2(a)(1) or (2). Such service would be subject to the telecommunications excise tax if such service is provided by a home service provider, as defined by Tax Law § 1101(b)(27)(ii), and the customer’s place of primary use is in New York. See Tax Law § 186-e.2(a)(4).

We note that pursuant to the MTSA, the definition of *mobile telecommunications service* in Tax Law § 1101(b)(24) is dictated by federal law. To the extent that the federal definition is amended, or is construed by a federal court, such amendment or construction may affect the advice provided in this NYT-G.

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