

New York State Department of Taxation and Finance  
**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-M-95(3)C  
Corporation Tax  
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**1995 Legislation Affecting Telephone and Telegraph Businesses  
and Other Providers of Telecommunication Services**

**Introduction**

Article 9 of the Tax Law has been amended in relation to the taxation of telephone corporations and telecommunication services. Sections 184 and 184-a have been amended to provide that telephone corporations are subject to tax only if they are formed for or principally engaged in local telephone business. Section 186-a has been amended to remove the provisions subjecting telephone and telegraph service receipts to tax under that section. The charges representing these receipts are now subject to tax under newly enacted section 186-e, Excise Tax on Telecommunication Services. Section 186-c, which imposes the Metropolitan Business Tax Surcharge (MTA surcharge) in the Metropolitan Commuter Transportation District (MCTD) on the tax imposed under section 186-a, has been amended to add a similar MTA surcharge in relation to the tax imposed by section 186-e in the MCTD. Other sections of Article 9 have been amended to incorporate the modifications outlined above, as well as certain other miscellaneous provisions. In general, these amendments are effective on January 1, 1995.

**Section 184 -- Additional Franchise Tax on Transportation and Transmission  
Corporations and Associations**

**General**

Section 184 has been amended to provide that telephone corporations are subject to tax only if they are formed for or principally engaged in local telephone business. *Local telephone business* means the provision or furnishing of telecommunication services for hire where the service consists of carrier access service or the service originates and terminates within the same local access and transport area (LATA).

**Telecommunication Services**

The term *telecommunication services* has the same meaning for the purposes of section 184 as for section 186-e.

Section 186-e defines *telecommunication services* to mean telephony or telegraphy, or telephone or telegraph service of any nature, including but not limited to any transmission of the following: 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. *Telecommunication services* also include services that are not telecommunication services as such, but are: (1) ancillary to the provision of telephone service (for example, directory information, call forwarding, caller-identification, call-waiting and supplementary services) and (2) services (of whatever nature) that are incidental to the provision of telecommunication services. The charges for equipment provided

in connection with the provision of any telecommunication service (e.g., beepers, telephones, fax machines, modems, equipment used for data transmission, etc.) are also subject to tax. The term *telecommunication services* does not apply to separately stated charges for a service that alters the substantive (information) content of the message transmitted.

**Example:** The character sequence 1, 2, 3, 4 is sent and the recipient receives only the summary number 10. The charge for this data processing service is separately billed. Because arithmetic processing has substantively changed the information content of the message sent, and the data processing service is separately billed, it is not considered a telecommunication service.

*Telecommunication services* excludes cable television and radio programming. Cable television and radio programming consists of the transmitting to subscribers of programs broadcast by one or more television or radio stations by means of wire, cable, microwave or any other means.

### **Local Access and Transport Areas (LATAs)**

The term *LATA* refers to those geographic areas that were formed and defined pursuant to the Modification of Final Judgment in United States v. Western Electric Company (Civil Action No. 820192) in the United States District Court for the District of Columbia, or the LATA-like Rochester non-associated area. There are seven distinct LATAs dividing New York State, generally designated as the Albany, Binghamton, New York City - Metro, Poughkeepsie, Buffalo, Rochester, and Syracuse LATAs. Certain LATAs include parts of other states, such as Massachusetts, Connecticut, and Pennsylvania.

### **Principally Engaged in Local Telephone Business**

Any telephone company principally engaged in a local telephone business must file Form CT-184 to report its gross earnings subject to tax under section 184. A corporation is considered to be principally engaged in a local telephone business if more than 50% of its operating receipts come from the furnishing of carrier access services and from telecommunication services provided within the same LATA (intra-LATA services). The following formula will determine if a corporation is principally engaged in local telephone business:

$$\frac{\text{Receipts from carrier access services + receipts from intra-LATA telecommunication services}}{\text{Total operating receipts}} > 50\%$$

#### Numerator

All receipts from carrier access services are included in the numerator as receipts from local telephone business, such as access fees associated with inter-LATA, interstate, and international services.

Examples of receipts from telecommunication services provided within the same LATA included in the numerator are:

- receipts for basic service and dial tone,

- local service receipts from subscriber's stations, public telephones, service stations, local private lines,
- intra-LATA toll service receipts, and
- any other telecommunication services receipts provided within the same LATA.

In addition, the following receipts must be included in the numerator as local telephone business receipts if earned in connection with carrier access or intra-LATA services:

- receipts from services which are ancillary to the provision of telecommunication services, such as directory information, call forwarding, caller-identification, call-waiting and supplementary services;
- receipts from equipment provided in connection with the provision of any local telecommunication service (e.g., beepers, telephones, fax machines, modems, equipment used for data transmission, etc.); and
- receipts from incidental services provided in connection with local telecommunication services.

The receipts described above are included in the numerator as local telephone business receipts with no deduction for any exclusions allowed in the computation of gross earnings subject to tax.

Since certain LATAs overlap state boundaries, certain intra-LATA calls may also be interstate calls. The toll charges for such intra-LATA, interstate calls should be included in the numerator as local telephone business receipts but are ultimately excluded from the computation of gross earnings.

**Example:** A call is made from Albany, NY, to Glens Falls, NY which are both within the same LATA. This call is a local telephone call, and all charges are included as local telephone business receipts.

**Example:** A call is made from Chatham, NY, to Boston, Massachusetts. The local telephone company charges access fees of \$.30, and the cost of the toll call is \$4.00. The access fee of \$.30 is included in the receipts from local telephone business.

**Example:** A call is made from Troy, NY, to Hancock, Massachusetts, which are within the same LATA. The usage charge is \$1.00, with no carrier access charges imposed. The charges from this call are included in local telephone business receipts, but since it is also an interstate call, the charges are excluded from gross earnings subject to tax.

### Denominator

The denominator is comprised of total operating receipts that occur as a result of the corporation's major or central operations, before any deductions for the cost of sales or operating expenses.

Receipts from passive sources such as rental income, interest, dividends, and capital gains are generally not included in total operating receipts. However, if such receipts are part of the central operations of the corporation, they would be included in total operating receipts.

### **Computation of Gross Earnings from Local Telephone Business**

Effective January 1, 1995, gross earnings subject to tax will include gross revenues from all telecommunication services provided in New York State minus 100% of the separately stated charges from sales for ultimate consumption of inter-LATA, interstate, or international telecommunication services.

Effective January 1, 1996, and thereafter, gross earnings subject to tax will also exclude 30% of any intra-LATA toll charges (including any *interregion regional calling plan service*) derived from sales for ultimate consumption by the corporation's customers.

In addition to the local telephone business receipts mentioned above, gross earnings includes receipts from the employment of capital from all sources in New York State, such as rentals from the use of real or tangible personal property, interest and dividends from New York State sources, and capital gains from the sale or exchange of property or securities located in New York State.

### **Section 184-a - - Additional Temporary Metropolitan Transportation Business Tax Surcharge on Transportation and Transmission Corporations and Associations**

Similar to section 184, section 184-a has been amended to modify the MTA surcharge on transportation and transmission businesses. Again, with respect to telephone corporations, section 184-a is limited to only those corporations formed for or principally engaged in the conduct of local telephone business in the MCTD. The terms *local telephone business and telecommunication services* have the same meaning as in sections 184 and 186-e, respectively, except they relate to the MCTD rather than the state as a whole. The surcharge is applied to the portion of the section 184 tax attributable to the MCTD. This allocation is based on local telephone business receipts derived from the MCTD divided by local telephone business receipts statewide.

### **Section 186-a - - Tax on the Furnishing of Utility Services**

Section 186-a of the Tax Law has been amended to remove the provisions subjecting telephony and telegraphy and telephone and telegraph service receipts to tax under that section. The charges from these services will now be subject to tax under section 186-e, Excise Tax on Telecommunication Services.

Note: A provider of telecommunication services that is subject to the supervision of the Department of Public Service is considered a utility of the first class under section 186-a and continues to be subject to tax on gross income for certain non-telecommunication receipts. These receipts include receipts from interest, dividends, and royalties from sources within New York State; profits from the sale of securities held, managed, or controlled in New York State; real property sold within New York State; personal property sold within New York State that is not part of the stock in trade of the

utility, and profits from any transaction except sales for resale within New York State.

**Example:** A provider of telecommunication services is subject to the supervision of the Department of Public Service. It has receipts from telecommunication services of \$10 million, \$30,000 in profits from the sale of an office building located in New York State, and interest income from New York State investments of \$120,000. The provider of telecommunication services is required to include the \$30,000 profit on the sale of real property and the \$120,000 of interest in its computation of gross income under section 186-a. The receipts from telecommunication services are not subject to tax under section 186-a, but are taxed under section 186-e. (See the following section for more information regarding the tax imposed under section 186-e.)

In addition, any person, corporation, or other entity (including a provider of telecommunication services), whether or not supervised by the Department of Public Service, that sells or furnishes other utility services, such as gas, electricity, steam, water or refrigeration service, for ultimate use or consumption in New York State, will continue to be subject to the tax under section 186-a on the receipts from those services.

### **Section 186-e - - Excise Tax on Telecommunication Services**

Effective January 1, 1995, section 186-e imposes an excise tax on the gross receipt from the sale of any telecommunication service, to be paid by every provider of telecommunication services.

#### **Provider of Telecommunication Services**

Any person, corporation, or other entity<sup>1</sup> that furnishes or sells telecommunication services, regardless of whether such activities are the main business of the person, corporation, or other entity, or are only incidental thereto, is considered a *provider of telecommunication services*.

#### **Gross Receipt**

Each gross receipt is the amount charged (or charge) for the telecommunication service provided, with no deductions, and is expressed in money, whether paid in cash, credit or property of any kind or nature. A deduction is allowed for bad debts incurred with respect to charges subjected to tax under section 186-e, when the debt becomes worthless in accordance with consistently applied generally accepted accounting principles.

#### **Computation of Tax**

The excise tax is imposed at a rate of 3.5% on each charge for (1) any intrastate telecommunication

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<sup>1</sup> In addition to persons and corporations, *providers of telecommunication services* include companies, associations, joint-stock companies or associations, partnerships or limited liability companies, estates, assignees or rents, any person acting in a fiduciary capacity, or any other entity. Also included are persons, their assignees, lessees, trustees or receivers, appointed by any court whatsoever, or by any other means.

services; (2) any interstate or international telecommunication services that originate or terminate in New York State and are charged to a service address in New York State (regardless of where the amounts charged are actually billed or ultimately paid); and (3) private telecommunication services attributable to New York State.

As an excise tax, the charge for each telecommunication service is determined on the basis of each transaction. Providers of telecommunication services will be required to file a report for each calendar year, summarizing the charges accrued and the tax liability to be paid.

## Exclusions

Section 186-e provides certain specific exclusions:

1) **Sale-for-Resale Exclusion** - Certain sales-for-resale of telecommunication services are excluded from tax. In order to qualify for the sale-for-resale exclusion, the purchaser must sell the purchased service as telecommunication services, as such. Moreover, the purchaser must be an interexchange carrier or local carrier (including a facilities-based cellular common carrier).<sup>2</sup> Publication 41, *Treatment of Sales-for-Resale Under Section 186-e of the Tax Law*, lists resellers eligible for the exclusion. If a particular purchaser (reseller) is not listed, a provider may accept a *Certificate of Public Convenience and Necessity* issued by the PSC as evidence that a carrier is eligible for the resale exclusion. For other sales-for-resale, a credit is allowed (see *Sale-for-Resale Credit* on page 11 ).

2) **Cable Television Service Exclusion** - The provision of cable television and radio programming are outside the scope of section 186-e. Providing cable television and radio programming means the transmitting to subscribers of programs broadcast by one or more television or radio stations by means of wire, cable, microwave or any other means. (Note: The sale of the underlying telecommunication services to a cable television or radio provider, for the purposes of transmitting programs to subscribers, is subject to tax under section 186-e.)

3) **Air Safety and Navigation Exclusion** - Charges for telecommunication services provided to air carriers solely for the purpose of air safety and navigation are excluded from gross receipts subject to tax if two conditions are met. (1) Ninety percent of the organization is owned directly or indirectly by air carriers<sup>3</sup>. (2) The provider's principal function is to provide

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<sup>2</sup> Section 186-e defines *Interexchange carrier* to mean any provider of telecommunication services between two or more exchanges that qualifies as a common carrier; in other words, any person engaged as a common carrier for hire in intrastate, interstate or foreign telecommunication services. *Local carrier* is defined as any provider of telecommunication services for hire to the public, that is subject to the supervision of the Public Service Commission (P.C.) and is engaged in providing carrier access service to a switched network. For the sole purpose of the application of the sale-for-resale exclusion, a reference to an *interexchange carrier* or *local carrier* shall include a facilities-based cellular common carrier without regard to a determination of whether such carrier is providing local or interexchange service as such.

<sup>3</sup> If the organization is a corporation, 90% of the voting stock must be owned directly or indirectly by air carriers.

telecommunication services for the purposes of air safety and navigation pursuant to the requirements of the Federal Aviation Administration or International Civil Aviation Organization. For purposes of this exclusion, telecommunication services refers to telecommunication services between aircraft and dispatcher, aircraft and air traffic control, or ground station and ground station or any combination of the above.

4) **Exclusions When Acting as Collection Agent** - When a provider of telecommunication services is merely acting as a collection agent for a municipality in connection with the provision of an enhanced emergency telephone (E911) system pursuant to article six of the County Law, any surcharge or administrative fee retained is excluded from tax. When the provider is merely a collection agency for a tax authority (e.g., state and local sales taxes), such taxes collected are excluded from the charges subject to tax.

### **Intrastate Telecommunication Services**

Charges from all telecommunication services that originate and terminate within New York State are included in gross receipts, regardless of where the service address is located.

**Example:** A woman places a call from Montauk, NY, to Niagara Falls, NY. She charges the call to a third party location, which is associated with an out-of-state service address. Since the call originates and terminates in New York State, the entire charge is taxable. The service address is irrelevant.

Intrastate telecommunication services include all services that originate and terminate in New York State, even if routed out of state in making the connection.

**Example:** A person faxes a report from New York City to Jamestown, NY. This telecommunication service is routed through New Jersey and Pennsylvania. Although the transmission is routed out of state, the call originates and terminates in New York State. It is an intrastate call, and 100% of the charge is subject to tax.

### **Interstate and International Telecommunication Services**

Charges from interstate and international telecommunication services are attributed, in full, to New York State if the service originates or terminates in New York State and the service is billed to a service address in New York State.<sup>4</sup> Generally, the service address is the location of the telecommunication equipment from which the service is originated or received, such as a phone or computer terminal that is associated with the billing.

**Example:** A woman calls Dublin, Ohio, from Buffalo, NY, and is billed \$7.00 for the telecommunication service. The service originates in New York State, and because the equipment associated with the billing is in New York State, the service address is in New

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<sup>4</sup> A credit is available if a service is taxable in more than one jurisdiction. See page 11, Multijurisdictional Credit, for additional information.

York State. The service is taxable in New York State and applies to the entire \$7.00 charged.

**Example:** A man calls collect from Dallas, Texas, to Utica, NY. The service terminates in New York State, and because the equipment associated with the billing is in New York State, the service address is in New York State. The service is taxable in New York State.

Special rules define the service address if the telecommunication service is obtained through a credit or payment mechanism (such as a credit card, calling card, or third party billing), or the service address is not a defined location (such as a mobile telephone, paging system, maritime system, air-to-ground system, etc.). The rules are applied in a specific order. If more than one rule applies, the first rule to apply should be used to determine the service address. The rules are:

(1) If the telecommunication originates or terminates in New York State and is charged to telecommunication equipment that is not associated with the origination or termination of the telecommunication (for example, by the use of a calling card or third party billing) and the location of the equipment is in New York State, the service address will be deemed to be in New York State.

**Example:** A man calls Syracuse, NY, from Denver, Colorado, and charges the call to his home telephone in Cooperstown, NY. The call terminates in New York State, and because the telecommunications equipment billed is in New York State, the service address is in New York State. The charge from this call is taxable because it terminates in New York State and has a service address in New York State.

(2) If the service is obtained by charging a calling card, third party billing, or other method, that is associated with telecommunication equipment not located in the state of origination or termination of the telecommunication, then the service address is deemed to be the location of the origination of the telecommunication.

**Example:** A man calls Seattle, Washington, from a pay telephone in New York City and charges the call to his home telephone in Charlotte, North Carolina. Since this is a third party billing to a telephone that is not in the state of origination or termination of the telecommunication (i.e., New York or Washington), the service address is deemed to be the origin of the call, New York City. Since the call originates in New York State and the service address is in New York State, the charge is taxable.

**Example:** A woman calls Buffalo, NY, from a telephone in E1 Paso, Texas, and charges the call to her calling card. Her calling card is associated with her home telephone in New Orleans, Louisiana. Since this is a calling card call, and the card is not associated with a telephone that is in the state of origination or termination of the telecommunication (i.e., Texas or New York), the service address is defined as the origin of the call, E1 Paso, Texas. Although the call terminates in New York State, the service address is not in New York State. Therefore, the charge is not attributed to New York State.

(3) If the service is obtained through a credit or payment mechanism such as credit or debit card, then the service address is deemed to be the location of the origination of the telecommunication.

**Example:** A woman calls Toronto, Canada, from a pay telephone in Albany, NY, and charges the call to her VISA credit card. Since she used a credit card, the service address is deemed to be where the call was originated, Albany, NY. Since the call originates in New York State and the service address is in New York State, the charge is taxable.

(4) If the service address is not a defined location, as in the case of mobile telephones, paging systems, maritime systems, air-to-ground systems and the like, the service address is defined as the location of the subscriber's primary use of the telecommunications equipment as determined by telephone number, authorization code, or location in New York State where bills are sent. However, the location of the mobile telephone switching office or similar facility in New York State that receives and transmits the signals of the telecommunication (such as the cell antenna location which transmits the call) will be deemed to be the service address if the mobile telephone switching office or similar facility is outside the subscriber's assigned service area.

**Example:** A man from Springfield, Massachusetts is paged while attending a conference in Albany, NY. His primary use of his paging service is in Springfield, but he is outside his assigned service area. Accordingly, the service address is defined as the mobile switching office (or antenna location) in Albany that transmits the signal. Since the service terminates in New York State, and the service address is deemed to be New York State, the charge is taxable.

### **Private Telecommunication Services**

Any dedicated telecommunication service that entitles the user or users to the exclusive or priority use of a communications channel or group of channels from one or more locations to one or more locations is a *private telecommunication service*. In this context, *exclusive* means that the user-subscribers have use of a communications channel to the exclusion of all others who are not authorized to use the channel (but not joint authorized users). *Priority* means that only authorized user-subscribers, as opposed to unauthorized persons, receive preferential use of a communications channel, but not necessarily a preference to the use of such channel with respect to each other.

Tax is imposed on all charges from private telecommunication services that are located entirely within New York State (intrastate services). Receipts from interstate and international private telecommunication services must be allocated.

### **Allocation Rules for Interstate and International Private Telecommunication Services**

Section 186-e specifies two options for allocating the charge from an interstate or international private telecommunication service. The first applies when each channel segment between channel termination points (CTPs)<sup>5</sup> is separately stated. The second method allocates charges where each

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<sup>5</sup> A *channel termination point* (CTP) is any point where the user interfaces with the private telecommunications system, through the use of telecommunications equipment, such as a telephone, computer, video terminal, etc.

channel segment between channel termination points is **not** separately stated. If the Commissioner of the Department of Taxation and Finance determines that any of the specified allocation methods do not fairly and equitably reflect the private telecommunication services attributable to New York State, he may prescribe alternative allocation methods.

The specific rules are:

(1) When the charge for each channel segment is **separately stated** and the amount fairly reflects New York State origination and/or termination traffic, the charge allocated to New York State is made up of the following:

- 100% of the amount charged at each CTP within New York State;
- 100% of the amount charged for the use of each channel segment between CTPs within New York State; and
- 50% of the amount charged for the use of any channel segment between a CTP in New York State and a CTP outside New York State.

**Example:** Charges for an interstate private telecommunications channel connecting Buffalo, Albany, and Boston consist of the following: \$10 charged at each CTP, \$100 charged for the use of the channel between Buffalo and Albany, and \$150 between Albany and Boston. The charges fairly reflect New York State origination and termination traffic. The charge is allocated to New York State as illustrated below:

	<u>Actual Charges</u>	<u>Allocation Computation</u>	=	<u>Allocated to New York State</u>
\$10 x 3 CTPs	\$ 30	\$10 x 2 CTPs in NYS	=	\$ 20
Buffalo-Albany	\$100	\$100 x 100%	=	\$100
Albany-Boston	<u>\$150</u>	\$150 x 50%*	=	<u>\$ 75</u>
Charges (unallocated)	\$280			
Charges allocated to New York State				\$195

\* The separately stated charge for any channel segment between a CTP in New York State and a CTP outside New York State must be allocated at 50%.

(2) When the charge for each channel segment is **not separately stated** or the charge does not fairly reflect New York State origination and/or termination traffic, the charge allocated to New York State is made up of the following:

- 100% of the amount charged at each CTP within New York State;
- an allocated portion of the gross interstate or international channel charge determined by dividing the number of CTPs within New York State by the total number of CTPs everywhere.

**Example:** Charges for an interstate private telecommunications channel are billed as follows: \$50 charged each CTP and \$400 charged for the use of an entire channel between Buffalo, Albany, New York City, and Washington, DC. The allocated charge is computed as illustrated as below:

	<u>Actual Charges</u>	<u>Allocation Computation</u>	<u>Allocated to New York State</u>
\$50 x 4 CTPs	\$200	\$50 x 3 CTPs in NYS	= \$150
Entire channel	<u>\$400</u>	\$400 x 3/4*	= <u>\$300</u>
Charges (unallocated)	\$600		
Charges allocated to New York State			\$450

\* Since the charge for each channel segment is not separately stated, the gross channel charge is allocated by the number of CTPs in NYS divided by the number of CTPs everywhere, or 3/4.

### **Sale-for-resale Credit**

If a reseller of telecommunication services is not an interexchange carrier or local carrier (including a facilities-based cellular common carrier), a credit is allowed to the reseller for tax paid when the services are actually resold. The credit operates such that the tax on the resale is applied to the difference between the gross charge imposed on resale and the gross amount paid to acquire the resold service. (Mathematically, the credit may be computed by multiplying the reseller's cost to purchase the resold service by the tax rate.)

**Example:** A telephone company sells for a total of \$2.00 a telecommunication service to a reseller for resale. The reseller, which is not an interexchange carrier or local carrier, resells the service for \$5.00. The reseller owes a tax on the difference of \$3.00, or \$.105 ( $\$3.00 \times 3.5\%$ ). When reporting on the resold service, the reseller will show a gross charge of \$5.00, an excise tax computed of \$.175 ( $\$5.00 \times 3.5\%$ ), and a credit of \$.07 ( $\$2.00 \times 3.5\%$ ).

### **Multijurisdictional Credit**

In order to prevent multijurisdictional taxation, a credit is allowed on any interstate or international telecommunication service upon proof that a telecommunication services provider paid a like tax to another state or country on the same service. The amount of the credit will be the amount lawfully due and paid to the other state or country, but it may not exceed the amount of tax actually imposed in New York State. The credit is determined on the basis of each individual transaction.

### **Refund Election**

In lieu of any of the credits described above, a taxpayer may elect to take a refund. However, notwithstanding the provisions of section 1088(c) of the Tax Law, no interest will be allowed or paid on any credit or refund allowed under the sale-for-resale credit.

## **Record Keeping**

Every provider of telecommunication services, taxable under section 186-e, must keep records of its business in a form as required by the Commissioner. These records must be preserved for a period of three years unless the Commissioner consents to a shorter period or requires that they be kept longer.

### **Section 186-c(1)(b) - - MTA Surcharge Related to Telecommunication Services**

Section 186-c has been amended to add an MTA surcharge related to telecommunication services in the metropolitan commuter transportation district (MCTD). Similar to the statewide Excise Tax on Telecommunication Services imposed by section 186-e, the MTA surcharge is imposed on charges derived from the MCTD, but at a rate of 17% of the state tax rate. Currently, the MTA rate is 0.595% ( $.17 \times .035 = .00595 = .595\%$ ). The MTA surcharge is effective for tax years beginning on or after January 1, 1995, and ending before December 31, 1997.

All of the definitions and provisions of section 186-e apply to the MTA surcharge imposed by section 186-c(1)(b), with any necessary modifications and limitations, including substituting the words *metropolitan commuter transportation district* for the word *state* where appropriate. Like the statewide excise tax, the MTA surcharge is determined on the basis of each transaction. Accordingly, the MTA surcharge applies to each charge for (1) any intra-MCTD telecommunication services, (2) any inter-MCTD telecommunication services that originate or terminate in the MCTD and are charged to a service address in the MCTD (including intrastate, interstate, and international telecommunication services), and (3) private telecommunication services attributable to the MCTD.

## **Miscellaneous Provisions**

### **State Tax Surcharge**

Section 188 has been amended to apply the state tax surcharge to the tax imposed by section 186-e. The surcharge is imposed at a rate of 7.5% for tax years ending on December 31, 1995, and 2.5% for tax years ending on December 31, 1996.

### **Section 186-e and Section 186-a Filing Requirements**

To facilitate filing for those providers of telecommunication services who are subject to both section 186-e and section 186-a, a new form has been designed. Any person, corporation or other entity with receipts from telecommunication services, even if not its primary business, must now file Form CT-186-E, *Telecommunications Tax Return and Utility Services Tax Return* to report the taxes imposed by sections 186-e and 186-a, the state tax surcharge imposed by section 188, and the MTA surcharges<sup>6</sup> related to sections 186-e and 186-a, imposed by section 186-c of the Tax Law.

(Note: A person, corporation, or other entity with no receipts from telecommunication services, but

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<sup>6</sup> *MTA surcharges* refers to the Temporary Metropolitan Transportation Business Tax Surcharge on Utility Services and Excise Tax on Sale of Telecommunication Services imposed by section 186-c of the Tax Law.

having other receipts from the sale or furnishing of utility services, will continue to use Form CT-186-P or Form CT-186-A, whichever applies, to report the taxes under section 186-a. In addition, Form CT-186-A/M or CT-186-P/M, whichever applies, will continue to be used to report the MTA surcharge if Form CT-186-A or CT-186-P is used.)

### **Special Additional Mortgage Recording Tax Credit**

The Special Additional Mortgage Recording Tax Credit available under section 187 **may not** be applied against the Excise Tax on Telecommunication Services imposed by section 186-e.

### **Estimated Tax**

The estimated tax provisions under sections 197-a and 197-b have been amended to apply to the Excise Tax on Telecommunication Services imposed by section 186-e. See Important Notices N-95-12 and N-95-16, or the instructions for Form CT-186-E for additional information regarding estimated tax payments.

### **Sections 183 and 183-a**

Except for the provisions explained below, there were no other amendments in 1995 to sections 183 or 183-a, Franchise Tax on Transportation and Transmission Corporations and Associations, and Temporary Metropolitan Transportation Business Tax Surcharge on Transportation and Transmission Corporations and Associations, respectively. Accordingly, any corporation principally engaged in any telephone business remains subject to the tax and MTA surcharge imposed by sections 183 and 183-a.

### **Telecommunications Relating to Air Safety and Navigation**

If ninety percent of a corporation's voting stock is owned directly or indirectly by air carriers, and its principal function is to provide telecommunication services for the purposes of air safety and navigation pursuant to the requirements of the Federal Aviation Administration or International Civil Aviation Organization, it will not be considered to be principally engaged in any telephone business. It will not be subject to the franchise taxes and MTA surcharges under sections 183, 183-a, 184, and 184-a. In addition, the receipts from such activities will not be subject to the excise tax and MTA surcharge imposed under sections 186-e and 186-c. For the purposes of this exception, telecommunication services refers to telecommunication services between aircraft and dispatcher, aircraft and air traffic control, or ground station and ground station, or any combination of the foregoing.

### **MTA Surcharges Extended**

The temporary MTA surcharges imposed under Article 9, sections 183-a, 184-a, 186-b, 186-c, and 189-a have been extended through tax years ending before December 31, 1997.