

State Wireless Communications Service Surcharge

The County Law was recently amended to expand the existing statewide cellular telephone service surcharge to include all wireless communications services. For bills rendered on or after August 1, 2002, a monthly \$1.20 fee is imposed for **each** device used to access such service. 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 new surcharge on **each** device regardless of the pricing structure for the plan. Surcharges collected from customers on or after August 1, 2002, must be remitted to the NYS Tax Department rather than the Division of State Police.

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 customer's address under a service contract in effect on July 28, 2002, will, for the remainder of the contract term (excluding any extension or renewal), be treated as that customer's *place of primary use* in determining the taxing jurisdiction for taxes on wireless communications services.

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, that offers 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. The United States Code defines commercial mobile service as any *mobile service* that is provided for profit and that makes interconnected service (meaning connected to the public switched telephone network) available to the public. The term *wireless communications service* includes 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. Internet access services that provide a connection to the Internet by means of a dial-up service or dedicated line are not considered wireless communications services. A service provider that furnishes a wireless service via a mobile wireless modem between the customer and the Internet access service provider is providing a wireless communications service. Wireless communications service does not include a prepaid telephone calling service.

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.

Billing and Collection From Customers

Wireless communications service suppliers providing service in New York State must add the surcharge to bills rendered **on or after August 1, 2002** 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.

Reporting and Remittance Procedures

Service providers must report and remit collections to the Tax Department on a quarterly basis.

Due dates for quarterly returns and collections

| Quarterly period | Due date |
|-------------------------------|-----------------|
| December 1 - February 28 (29) | March 15 |
| March 1 - May 31 | June 15 |
| June 1 - August 31 | September 15 |
| September 1 - November 30 | December 15 |

Special provisions of first reporting period

Surcharges collected during the month of July 2002 must be remitted to the State Police. Surcharges collected during the month of August 2002 must be remitted to the Tax Department with the return for the period September 1, 2002, through November 30, 2002, which will be due on December 16, 2002. All surcharges collected after August 1, 2002, regardless of the bill date, must be remitted to the Tax Department.

Suppliers may retain 1.166% of their total collections as an administrative fee. Surcharge funds are deposited into both the state general fund and into the statewide public safety communications account of the miscellaneous special revenue fund for payment of costs related to the statewide operation of the 911 emergency system.

Customer's responsibility

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.

Exemptions

New York State may purchase wireless communications services exempt from the imposition of the surcharge. New York City and any county outside New York City, if the City or county participates with the New York State Police in providing wireless 911 emergency services, may also purchase wireless communications services exempt from 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 pursuant to section 6703 of the Insurance Law 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, the exemption does not apply to instrumentalities of the state such as authorities and commissions; public corporations such as industrial development agencies or authorities (IDAs); political subdivisions such as counties and cities (other than, as previously noted, New York City and any county outside the City, if the City or county participates with the New York State Police in providing wireless 911 emergency services), villages, towns, school districts, fire districts, and boards of cooperative educational services; organizations that have established exemption under section 501(c)(3) of the Internal Revenue Code; veterans' organizations; HMOs; or rural electric cooperatives.