



## Wireless Communications Surcharge on Postpaid Wireless Communications Services

This memorandum explains recent changes to the Tax Law related to the public safety communications surcharge on postpaid wireless communications services. These changes take effect on December 1, 2017.

Part EEE of Chapter 59 of the Laws of 2017, among other provisions:

- amended Tax Law § 186-f, which imposes the New York State public safety communications surcharge on postpaid wireless communications services;
- repealed the authority for localities to impose a local wireless communications surcharge under Article 6 of the County Law; and
- added Tax Law § 186-g, which provides that New York City and counties outside New York City may impose a local surcharge on postpaid wireless communications services.

The changes described in this memorandum are effective as of **December 1, 2017**.

Part EEE also amended the Tax Law to impose a public safety communications surcharge on *prepaid* wireless communications services. See [TSB-M-17\(2\)WCS](#), *Wireless Communications Surcharge on Prepaid Wireless Communications Services*, for more information.

### Definitions

*Wireless communications service supplier* means a facilities-based carrier or reseller that provides wireless communications service on a recurring basis or pursuant to a contract to customers whose place of primary use is in New York State.

*Place of primary use* is the residential or business street address within the licensed service area of the wireless communications service supplier provided by the supplier's customer that is representative of where the customer's use primarily occurs.

*Wireless communications service* is any commercial mobile service, as that term is defined in 47 U.S.C. § 332(d), as amended from time to time, including, but not limited to:

- 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.

These services must 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.

*Wireless communications device* is any equipment with real-time, two-way voice or data service 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, including, but not limited to, PDAs and handheld or laptop computers, etc.

**Note:** The term *wireless communications device* does **not** include one-way beepers, walkie-talkies, and medical lifeline services.

### **State surcharge (Tax Law § 186-f)**

Tax Law § 186-f imposes a monthly New York State surcharge on postpaid wireless communications services. The surcharge is \$1.20 per month for **each** device in service during any part of a month for every customer whose place of primary use is in New York State.

### **Local surcharge (Tax Law § 186-g)**

Chapter 59 repealed the authority granted to certain localities to impose a local wireless communications surcharge under Article 6 of the County Law and added a new Tax Law § 186-g in place of such authority. Tax Law § 186-g authorizes New York City and every county in New York State outside New York City to impose a local surcharge on postpaid wireless communications services.

The authorized local surcharge is \$0.30 (30 cents) per month for **each** device in service during any part of a month for every customer whose place of primary use is in such locality. Any local surcharge is in addition to the New York State surcharge and a supplier must collect both the New York State surcharge and any applicable local surcharge.

For a list of localities that have elected to impose the local surcharge and those that have not, see [Publication 451](#), *Wireless Communications Surcharge Rates on Postpaid Wireless Communications Services*.

### **Administrative provisions**

The New York State and local surcharges will now be administered by the Tax Department under the provisions of Tax Law Article 28 (Sales and Compensating Use Taxes). Unless otherwise provided, all the provisions of Tax Law Article 28 are applicable to the New York State surcharge, and all the provisions of Tax Law Article 28 and Tax Law Article 29 (Taxes Authorized for Cities, Counties and School Districts) are applicable to the local surcharge, including the provisions applicable to liability, penalties, interest, refunds, and other sales tax procedures. Previously, the administrative provisions of Tax Law Article 27 (Corporate Tax Procedure and Administration) applied.

The New York State surcharge and all local surcharges for periods beginning on or after December 1, 2017, must be remitted to the Tax Department. Previously, each locality that

imposed the former local wireless surcharge under the County Law was individually responsible for the administration and collection of the surcharge. Local surcharges for periods ending before December 1, 2017, must be remitted directly to the respective locality.

**Billing and collection from customers**

Wireless communications service plans that include multiple devices are subject to the surcharge on each device regardless of the pricing structure for the plan.

Suppliers must add the surcharge as a separate line item to bills furnished to their customers and identify it as the *public safety communications surcharge*. If space limitations on a bill do not allow for a supplier to identify the surcharge as the *public safety communications surcharge*, then, in those limited circumstances, it is sufficient for the supplier to use *PSCS* as an alternative to identify the surcharge.

**Note:** The surcharge is not included in the receipt subject to sales tax.

Wireless communications service suppliers are liable for the surcharge imposed and required to be collected, regardless of whether they collect the surcharge from their customers. Previously, suppliers had no legal obligation to enforce the collection of the surcharge and were required to provide the Tax Department and localities with the name and address of customers that refused or failed to pay the surcharge and the amount remaining unpaid.

**Reporting and remitting the surcharge**

Wireless communications service suppliers must file a single return to report and remit the New York State and local surcharges to the Tax Department on a quarterly basis. The return and payment are due 20 days after the end of a quarter.

The first return will cover the period December 1, 2017, through February 28, 2018, and is due on March 20, 2018. The due dates for each quarter are as follows:

<u>Quarter</u>	<u>Due date</u>
December 1 - February 28 (29)	March 20
March 1 - May 31	June 20
June 1 - August 31	September 20
September 1 - November 30	December 20

Prior to the amendment of Tax Law § 186-f, the return and payment of the New York State surcharge were due 15 days after the close of a quarter. The final return for the former New York State surcharge is due December 15, 2017, covering the period September 1, 2017, through November 30, 2017.

Additionally, the former local surcharges imposed under the County Law required suppliers to remit collections on a monthly basis. Payments to the localities were due 30 days after the last business day of the month. The final period for the former local surcharges to be paid directly to localities is November 1, 2017, through November 30, 2017.

For periods beginning on or after December 1, 2017, wireless communications service suppliers must e-file their returns using *Wireless Communications Surcharge Web File* through their business *Online Services* accounts if they are subject to the corporation tax e-file mandate **or** meet all three of the following conditions:

- prepare tax documents themselves, without the assistance of a tax professional;
- use a computer to prepare, document, or calculate the required filings; and
- have broadband Internet access.

### **Administrative fee allowance**

Chapter 59 increased both the New York State and local administrative fees that a wireless communications service supplier may retain. A supplier may retain as an administrative fee:

- 1.749% of the total New York State surcharge it has collected (formerly 1.166%), and
- 3% of the total local surcharge it has collected (formerly 2%).

However, the administrative fee may be retained **only** if the supplier timely files its return and remits the total surcharge due with the return.

### **Exemptions**

The wireless communications surcharges do not apply to purchases made by:

- the State of New York and its agencies and instrumentalities;
- the United States of America and its agencies and instrumentalities;
- the United Nations;
- any nonprofit property/casualty insurance company organized under Insurance Law § 6703; or
- consumers who receive a Lifeline discount on their wireless communications service.

Other entities that may be exempt from the payment of certain other taxes and fees (such as state and local sales and use taxes) are subject to the postpaid wireless communications services surcharge. Examples of entities that are **not exempt** from payment of the surcharge include:

- organizations having tax exempt status under Internal Revenue Code § 501(c)(3) or Tax Law § 1116(a)(4);
- veterans' organizations;
- Health Maintenance Organizations; and
- rural electric cooperatives.

**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.