



Wireless Communications Surcharge on Prepaid Wireless Communications Services

This memorandum explains recent amendments to the Tax Law that impose a public safety communications surcharge on prepaid wireless communications services. These amendments take effect on December 1, 2017.

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

- amended Tax Law § 186-f to impose a public safety communications surcharge on prepaid wireless communications services; and
- added Tax Law § 186-g, which provides that New York City and counties outside New York City may impose a local surcharge on prepaid wireless communications services.

Businesses that sell prepaid wireless communications services at retail are required to collect the surcharges beginning **December 1, 2017**.

Part EEE also amended the Tax Law regarding the public safety communications surcharge imposed on *postpaid* wireless communications services. See [TSB-M-17\(1\)WCS](#), *Wireless Communications Surcharge on Postpaid Wireless Communications Services*, for more information.

Definitions

Prepaid wireless communications service means the right to use a commercial mobile radio service, whether or not sold with other property or services, that must be paid for in advance and that is sold for use over a specified period of time or in predetermined units or dollars that decline with use in a known amount, whether or not that right is represented by or includes the transfer to the purchaser of an item of tangible personal property.

Examples of prepaid wireless communications services include:

- prepaid mobile phones or other prepaid mobile devices preloaded with a set dollar amount or number of minutes;
- prepaid mobile phone cards preloaded with a set dollar amount, number of minutes, or units of airtime;
- recharge or refill authorization codes; and
- reloading mobile phones or mobile phone cards with additional minutes or units of airtime.

Prepaid wireless communications seller means a person making a retail sale of a prepaid wireless communications service.

State surcharge (Tax Law § 186-f)

Under Tax Law § 186-f, the New York State surcharge on prepaid wireless communications service is imposed at the rate of \$0.90 (90 cents) for each retail sale of a prepaid wireless communications service that occurs in New York State, whether or not the sale is made in conjunction with the sale of any tangible personal property.

Local surcharge (Tax Law § 186-g)

Tax Law § 186-g authorizes New York City and every county in New York State outside of New York City to impose a local surcharge on prepaid wireless communications services. The authorized local surcharge is \$0.30 (30 cents) on **each** retail sale of a prepaid wireless communications service within a locality, whether or not the sale is made in conjunction with the sale of any tangible personal property. Any local surcharge is in addition to the New York State surcharge and a seller must collect both the New York State 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 452](#), *Wireless Communications Surcharge Rates on Prepaid Wireless Communications Services*.

Administrative provisions

The New York State and local prepaid wireless surcharges will 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.

Collection of surcharge from customers

A sale of a prepaid wireless communications service occurs in a locality in New York State if the sale takes place at a seller's business location in such locality in the state. If the sale does not take place at the seller's place of business, it is considered to take place at:

- the purchaser's shipping address, **or**,
- if there is no item shipped, at the purchaser's billing address, **or**,
- if the seller does not have the purchaser's billing address, at an address as approved by the commissioner that reasonably reflects the customer's location at the time of the sale.

Remote sellers of prepaid wireless communications services should determine, using the sourcing rules outlined above, if the purchaser's location is in New York City or in which county outside New York City. The seller should then refer to Publication 452 to determine whether or not a local surcharge applies at that location.

The surcharge must be added as a separate line item to any sales slip, invoice, receipt, or other statement of the price given by a prepaid wireless communications seller to a purchaser, and must be identified as the *public safety communications surcharge*. If space limitations on a sales slip, invoice, receipt, or other statement of the price do not allow for a seller to identify the surcharge as the *public safety communications surcharge*, then, in those limited circumstances, it is sufficient for the seller to use *PSCS* as an alternative to identify the surcharge.

Note: The surcharge is not included in the receipt subject to sales tax, but must be collected **in addition to** any sales tax that is due on the transaction.

If multiple retail sales of prepaid wireless communications services occur within a single purchase transaction, sellers must collect the surcharge for **each** of those retail sales of prepaid wireless communications service. For example, a customer buys a prepaid mobile phone preloaded with minutes, together with a prepaid mobile refill card, from a general merchandise store located in a county in New York State that imposes a local surcharge. The store must collect \$1.20 on both the preloaded mobile phone and the prepaid mobile refill card (\$0.90 New York State surcharge plus \$0.30 local surcharge), for a total surcharge due of \$2.40.

Prepaid wireless communications sellers are liable for the surcharge imposed and required to be collected, regardless of whether they collect the surcharge from their customers.

Reporting and remitting the surcharge

Prepaid wireless communications sellers must file a return 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

Prepaid wireless communications sellers 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

Prepaid wireless communications sellers may retain a percentage of their collections as an administrative fee as follows:

- 1.749% of the total New York State surcharge it has collected, and
- 3% of the total local surcharge it has collected.

However, the administrative fee may be retained **only** if the seller 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 prepaid 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.