S T A T E O F N E W Y O R K

8830--B

2009-2010 Regular Sessions

I N A S S E M B L Y

June 11, 2009

Introduced by M. of A. KOON, JAFFEE, CASTRO, ESPAILLAT, COOK -- Multi-Sponsored by -- M. of A. DelMONTE, GABRYSZAK, MENG, SKARTADOS, TITONE, WEISENBERG -- read once and referred to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Corporations, Authorities and Commissions in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public service law, in relation to wireless communications devices; and to amend the tax law, in relation to a surcharge on prepaid wireless communications service

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The public service law is amended by adding a new section 92-g to read as follows:

S 92-G. AUTOMATIC LOCATION IDENTIFICATION AND ACCESS TO 911 EMERGENCY SERVICES FOR WIRELESS COMMUNICATIONS DEVICES. ALL WIRELESS COMMUNICATION DEVICES SOLD IN THIS STATE, INCLUDING BUT NOT LIMITED TO DISPOSABLE AND PREPAID DEVICES, SHALL BE CAPABLE OF ACCESSING 911 EMERGENCY SERVICES AND ENHANCED 911 SERVICES AS DEFINED IN SECTION THREE HUNDRED ONE OF THE COUNTY LAW, WHERE AVAILABLE, AND SHALL BE CAPABLE OF AUTOMATIC LOCATION IDENTIFICATION, REGARDLESS OF WHETHER THE CONSUMER HAS ENTERED INTO OR MAINTAINS A CONTRACT FOR WIRELESS COMMUNICATIONS SERVICES FOR SUCH DEVICE.

S 2. The tax law is amended by adding a new section 186-g to read as follows:

S 186-G. PREPAID WIRELESS COMMUNICATIONS SURCHARGE. 1. DEFINITIONS. (A) "CONSUMER" MEANS A PERSON WHO PURCHASES A PREPAID WIRELESS TELECOMMUNICATIONS DEVICE OR SERVICE IN A RETAIL TRANSACTION.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(B) "WIRELESS COMMUNICATIONS DEVICE" MEANS ANY EQUIPMENT USED TO ACCESS A WIRELESS COMMUNICATIONS SERVICE.

(C) "PREPAID WIRELESS TELECOMMUNICATIONS SERVICE" MEANS A WIRELESS TELECOMMUNICATIONS SERVICE WHICH MUST BE PAID FOR IN ADVANCE AND IS SOLD IN PREDETERMINED UNITS OR DOLLARS OF WHICH THE NUMBER DECLINES WITH USE IN A KNOWN AMOUNT, AND SHALL INCLUDE BUT NOT BE LIMITED TO PREPAID CALLING CARDS AS DEFINED IN SECTION NINETY-TWO-F OF THE PUBLIC SERVICE LAW OR ANY OTHER CARD OR SIMILAR ITEM WHICH PERMITS A CONSUMER ADDITIONAL CALLING TIME ON A PREPAID WIRELESS COMMUNICATIONS DEVICE.

2. (A) A SURCHARGE ON PREPAID WIRELESS COMMUNICATIONS SERVICE PROVIDED TO A RETAIL CUSTOMER IS IMPOSED AT THE RATE OF THREE PERCENT OF THE PURCHASE PRICE OF EACH WIRELESS COMMUNICATIONS SERVICE. WIRELESS PREPAID DEVICES AND EQUIPMENT SHALL BE EXCLUDED FROM SUCH SURCHARGE UNLESS SUCH DEVICES ARE BUNDLED WITH SERVICE MINUTES.

(B) EVERY RETAILER OF A WIRELESS COMMUNICATIONS SERVICE IN NEW YORK STATE MUST ACT AS A COLLECTION AGENT FOR THE STATE FOR THE COLLECTION OF THE SURCHARGE IMPOSED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION. THE SURCHARGE MUST BE REPORTED AND PAID TO THE COMMISSIONER ON A QUARTERLY BASIS ON OR BEFORE THE FIFTEENTH DAY OF THE MONTH FOLLOWING EACH QUARTERLY PERIOD ENDING ON THE LAST DAY OF FEBRUARY, MAY, AUGUST AND NOVEMBER, RESPECTIVELY. THE PAYMENTS MUST BE ACCOMPANIED BY A RETURN IN THE FORM AND CONTAINING THE INFORMATION THE COMMISSIONER MAY PRESCRIBE.

(C) EACH RETAILER IS ENTITLED TO RETAIN, AS AN ADMINISTRATIVE FEE, AN AMOUNT EQUAL TO ONE AND ONE-HALF PERCENT OF THE TOTAL COLLECTIONS OF THE SURCHARGE IMPOSED BY THIS SECTION, PROVIDED THAT THE RETAILER FILES ANY REQUIRED RETURN AND REMITS THE SURCHARGE DUE TO THE COMMISSIONER ON OR BEFORE ITS DUE DATE.

(D) NOTWITHSTANDING SECTION TWO HUNDRED SEVEN-B OF THIS ARTICLE, THE SURCHARGE IMPOSED BY THIS SECTION SHALL BE SUBJECT TO THE ADMINISTRATIVE PROVISIONS OF ARTICLE TWENTY-EIGHT OF THIS CHAPTER. THE TERM "TAXPAYER" IN ARTICLE TWENTY-EIGHT OF THIS CHAPTER REFERS TO A RETAILER OF PREPAID WIRELESS COMMUNICATIONS SERVICE SUBJECT TO THIS SECTION AND THE TERM "TAX" IN ARTICLE TWENTY-EIGHT OF THIS CHAPTER REFERS TO THE SURCHARGE IMPOSED BY THIS SECTION.

3. THE PREPAID WIRELESS COMMUNICATIONS SURCHARGE SHALL BE COLLECTED BY THE SELLER FROM THE CONSUMER WITH RESPECT TO EACH RETAIL TRANSACTION OCCURRING IN THIS STATE CONSISTENT WITH ARTICLE TWENTY-EIGHT OF THIS CHAPTER. THE AMOUNT OF THE SURCHARGE SHALL BE EITHER SEPARATELY STATED ON AN INVOICE, RECEIPT, OR OTHER SIMILAR DOCUMENT THAT IS PROVIDED TO THE CONSUMER BY THE SELLER, OR OTHERWISE DISCLOSED TO THE CONSUMER. THE AMOUNT OF THE SURCHARGE THAT IS COLLECTED BY A SELLER FROM A CONSUMER PURSUANT TO THIS SECTION, WHETHER OR NOT SUCH AMOUNT IS SEPARATELY STATED ON AN INVOICE, RECEIPT, OR OTHER SIMILAR DOCUMENT PROVIDED TO THE CONSUMER BY THE SELLER, SHALL NOT BE INCLUDED IN THE BASE FOR MEASURING ANY TAX, FEE, SURCHARGE, OR OTHER CHARGE THAT IS IMPOSED BY THIS STATE, ANY POLITICAL SUBDIVISION OF THIS STATE, OR ANY INTERGOVERNMENTAL AGENCY.

4. DEPOSITS OF SURCHARGE MONIES COLLECTED AND RECEIVED. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, ALL SURCHARGE MONIES COLLECTED AND RECEIVED BY THE COMMISSIONER UNDER THIS SECTION MUST BE DEPOSITED DAILY TO THE CREDIT OF THE COMPTROLLER WITH THOSE RESPONSIBLE BANKS, BANKING HOUSES OR TRUST COMPANIES THE COMPTROLLER MAY DESIGNATE. THOSE DEPOSITS MUST BE KEPT SEPARATE AND APART FROM ALL OTHER MONIES IN THE POSSESSION OF THE COMPTROLLER. THE COMPTROLLER MUST REQUIRE ADEQUATE SECURITY FROM ALL SUCH DEPOSITORIES. OF THE TOTAL REVENUE COLLECTED OR RECEIVED UNDER THIS SECTION, THE COMPTROLLER MUST RETAIN IN THE COMP-

TROLLER'S HANDS AN AMOUNT DETERMINED BY THE COMMISSIONER TO BE NECESSARY FOR REFUNDS UNDER THIS SECTION, OUT OF WHICH THE COMPTROLLER WILL PAY ANY REFUNDS TO WHICH TAXPAYERS ARE ENTITLED UNDER THE PROVISIONS OF THIS SECTION. THE COMPTROLLER, AFTER RESERVING THE AMOUNT TO PAY REFUNDS, AND AFTER DEDUCTING THE AMOUNT RETAINED BY WIRELESS COMMUNICATIONS RETAILERS PURSUANT TO PARAGRAPH (C) OF SUBDIVISION TWO OF THIS SECTION, MUST, ON OR BEFORE THE TENTH DAY OF EACH MONTH, PAY ALL SURCHARGE MONIES COLLECTED AND RECEIVED UNDER THIS SECTION AND REMAINING INTO THE NEW YORK STATE WIRELESS TELEPHONE EMERGENCY SERVICE ACCOUNT OF THE MISCELLANEOUS SPECIAL REVENUE FUND, CREATED PURSUANT TO SECTION NINETY-SEVEN-QQ OF THE STATE FINANCE LAW.

S 3. This act shall take effect on the ninetieth day after it shall have become a law; provided that section two of this act shall take effect on the first day of the second quarterly period, as described in paragraph (b) of subdivision 2 of section 186-g of the tax law, as added by section two of this act, next commencing after this act becomes a law.