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

105

Eighth Extraordinary Session

I N S E N A T E

June 29, 2009

Introduced by COMMITTEE ON RULES -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the county law, in relation to authorizing the county of Suffolk to establish a wireless surcharge

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

Section 1. The county law is amended by adding a new section 308-x to read as follows:

S 308-X. ESTABLISHMENT OF COUNTY OF SUFFOLK WIRELESS SURCHARGE. 1. NOTWITHSTANDING THE PROVISIONS OF ANY LAW TO THE CONTRARY, THE COUNTY OF SUFFOLK, ACTING THROUGH ITS LOCAL COUNTY LEGISLATIVE BODY, IS HEREBY AUTHORIZED AND EMPOWERED TO ADOPT, AMEND OR REPEAL LOCAL LAWS TO IMPOSE A SURCHARGE IN AN AMOUNT NOT TO EXCEED THIRTY CENTS PER MONTH ON WIRELESS COMMUNICATIONS SERVICE IN THE COUNTY OF SUFFOLK. THE SURCHARGE SHALL BE IMPOSED ON EACH WIRELESS COMMUNICATIONS DEVICE AND SHALL BE REFLECTED AND MADE PAYABLE ON BILLS RENDERED FOR WIRELESS COMMUNICATIONS SERVICE THAT IS PROVIDED TO A CUSTOMER WHOSE PLACE OF PRIMARY USE IS WITHIN THE COUNTY. FOR PURPOSES OF THIS SECTION, THE TERM "PLACE OF PRIMARY USE" SHALL MEAN THE STREET ADDRESS THAT IS REPRESENTATIVE OF WHERE THE CUSTOMER'S USE OF THE WIRELESS COMMUNICATIONS SERVICE PRIMARILY OCCURS, WHICH ADDRESS MUST BE: (A) RESIDENTIAL STREET ADDRESS OR THE PRIMARY BUSINESS STREET ADDRESS OF THE CUSTOMER; AND (B) WITHIN THE LICENSED SERVICE AREA OF THE WIRELESS COMMUNICATIONS SERVICE SUPPLIER.

2. ANY LOCAL LAW ADOPTED PURSUANT TO THIS SECTION SHALL STATE THE AMOUNT OF THE SURCHARGE AND THE DATE ON WHICH THE WIRELESS COMMUNICATIONS SERVICE SUPPLIER SHALL BEGIN TO ADD SUCH SURCHARGE TO THE BILLINGS OF ITS CUSTOMERS. ANY WIRELESS COMMUNICATIONS SERVICE SUPPLIER WITHIN THE COUNTY OF SUFFOLK WHICH HAS IMPOSED A SURCHARGE PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL BE GIVEN A MINIMUM OF FORTY-FIVE DAYS WRITTEN NOTICE PRIOR TO THE DATE IT SHALL BEGIN TO ADD SUCH

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

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SURCHARGE TO THE BILLINGS OF ITS CUSTOMERS OR PRIOR TO ANY MODIFICATION TO OR CHANGE IN THE SURCHARGE AMOUNT.

3. (A) EACH WIRELESS COMMUNICATIONS SERVICE SUPPLIER SERVING THE COUNTY OF SUFFOLK SHALL ACT AS COLLECTION AGENT FOR THE COUNTY AND SHALL REMIT THE FUNDS COLLECTED PURSUANT TO A SURCHARGE IMPOSED UNDER THE PROVISIONS OF THIS SECTION TO THE CHIEF FISCAL OFFICER OF THE COUNTY OF SUFFOLK EVERY MONTH. SUCH FUNDS SHALL BE REMITTED NO LATER THAN THIRTY DAYS AFTER THE LAST BUSINESS DAY OF THE MONTH.

(B) EACH WIRELESS COMMUNICATIONS SERVICE SUPPLIER SHALL BE ENTITLED TO RETAIN, AS AN ADMINISTRATIVE FEE, AN AMOUNT EQUAL TO TWO PERCENT OF ITS COLLECTIONS OF A SURCHARGE IMPOSED UNDER THE PROVISIONS OF THIS SECTION.

(C) ANY SURCHARGE REQUIRED TO BE COLLECTED BY A WIRELESS COMMUNICATIONS SERVICE SUPPLIER SHALL BE ADDED TO AND STATED SEPARATELY IN ITS BILLINGS TO CUSTOMERS.

(D) EACH WIRELESS COMMUNICATIONS SERVICE CUSTOMER WHO IS SUBJECT TO THE PROVISIONS OF THIS SECTION SHALL BE LIABLE TO THE COUNTY OF SUFFOLK FOR THE SURCHARGE UNTIL IT HAS BEEN PAID TO THE COUNTY OF SUFFOLK EXCEPT THAT PAYMENT TO A WIRELESS COMMUNICATIONS SERVICE SUPPLIER IS SUFFICIENT TO RELIEVE THE CUSTOMER FROM FURTHER LIABILITY FOR SUCH SURCHARGE.

(E) NO WIRELESS COMMUNICATIONS SERVICE SUPPLIER SHALL HAVE A LEGAL OBLIGATION TO ENFORCE THE COLLECTION OF ANY SURCHARGE IMPOSED UNDER THE PROVISIONS OF THIS SECTION, PROVIDED, HOWEVER, THAT WHENEVER THE WIRELESS COMMUNICATIONS SERVICE SUPPLIER REMITS THE FUNDS COLLECTED TO THE COUNTY OF SUFFOLK, IT SHALL ALSO PROVIDE THE COUNTY OF SUFFOLK WITH THE NAME AND ADDRESS OF ANY CUSTOMER REFUSING OR FAILING TO PAY A SURCHARGE IMPOSED UNDER THE PROVISIONS OF THIS SECTION AND SHALL STATE THE AMOUNT OF SUCH SURCHARGE REMAINING UNPAID.

(F) EACH WIRELESS COMMUNICATIONS SERVICE SUPPLIER SHALL ANNUALLY PROVIDE TO THE COUNTY OF SUFFOLK AN ACCOUNTING OF THE SURCHARGE AMOUNTS BILLED AND COLLECTED.

4. ALL SURCHARGE MONIES REMITTED TO THE COUNTY OF SUFFOLK BY A WIRELESS COMMUNICATIONS SERVICE SUPPLIER SHALL BE EXPENDED ONLY UPON AUTHORIZATION OF THE LOCAL COUNTY LEGISLATIVE BODY AND ONLY FOR PAYMENT OF ELIGIBLE WIRELESS 911 SERVICE COSTS AS DEFINED IN SUBDIVISION SIXTEEN OF SECTION THREE HUNDRED TWENTY-FIVE OF THIS CHAPTER. THE COUNTY OF SUFFOLK SHALL SEPARATELY ACCOUNT FOR AND KEEP ADEQUATE BOOKS AND RECORDS OF THE AMOUNT AND SOURCE OF ALL SUCH MONIES AND OF THE AMOUNT AND OBJECT OR PURPOSE OF ALL EXPENDITURES THEREOF. IF, AT THE END OF ANY FISCAL YEAR, THE TOTAL AMOUNT OF ALL SUCH MONIES EXCEEDS THE AMOUNT NECESSARY FOR PAYMENT OF THE ABOVE MENTIONED COSTS IN SUCH FISCAL YEAR, SUCH EXCESS SHALL BE RESERVED AND CARRIED OVER FOR THE PAYMENT OF THOSE COSTS IN THE FOLLOWING FISCAL YEAR.

S 2. This act shall take effect immediately; provided, however, that the provisions of subdivision 1 of section 308-x of the county law, as added by section one of this act shall apply to bills rendered to wireless communications service customers by a wireless communications service supplier on and after the expiration of the notice period required pursuant to the provisions of subdivision 2 of such section 308-x; provided further, that a wireless service supplier may treat the address used by such supplier for any wireless communications customer under a service contact or agreement in effect on the effective date of the local law imposing such surcharge, as that wireless communications customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement, for purposes of determining the taxing jurisdiction with respect to taxes on wireless communications service.