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

10178

I N A S S E M B L Y

May 16, 2016

Introduced by M. of A. McDONALD, WOERNER -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to public safety communications surcharges on prepaid wireless telecommunications services; to amend the county law, in relation to wireless surcharges in Hamilton, Jefferson, Lewis, Niagara, Oneida, Oswego, Schoharie, and St. Lawrence County

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

Section 1. Article 28 of the tax law is amended by adding a new part 6 to read as follows:

PART VI

PUBLIC SAFETY COMMUNICATIONS SURCHARGE ON PREPAID WIRELESS TELECOMMUNICATIONS SERVICES

SECTION 1155. PUBLIC SAFETY COMMUNICATIONS SURCHARGE ON PREPAID WIRELESS TELECOMMUNICATIONS SERVICES.

S 1155. PUBLIC SAFETY COMMUNICATIONS SURCHARGE ON PREPAID WIRELESS TELECOMMUNICATIONS SERVICES. (A) AS USED IN THIS SECTION, WHERE NOT OTHERWISE SPECIFICALLY DEFINED AND UNLESS A DIFFERENT MEANING IS CLEARLY REQUIRED:

(1) "CONSUMER" MEANS A PERSON WHO PURCHASES PREPAID WIRELESS TELECOMMUNICATIONS SERVICE IN A RETAIL TRANSACTION.

(2) "SURCHARGE" MEANS THE PUBLIC SAFETY COMMUNICATIONS SURCHARGE ON PREPAID WIRELESS TELECOMMUNICATIONS SERVICES THAT IS REQUIRED TO BE COLLECTED BY A VENDOR FROM A CONSUMER IN THE AMOUNT ESTABLISHED IN SUBDIVISION (B) OF THIS SECTION.

(3) "PREPAID WIRELESS TELECOMMUNICATIONS SERVICE" MEANS A WIRELESS TELECOMMUNICATIONS SERVICE THAT ALLOWS A CALLER TO DIAL 911 TO ACCESS THE 911 SYSTEM, WHICH SERVICE 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.

(4) "PROVIDER" MEANS A PERSON THAT PROVIDES PREPAID WIRELESS TELECOMMUNICATIONS SERVICE PURSUANT TO A LICENSE ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION.

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

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(5) "RETAIL TRANSACTION" MEANS THE PURCHASE OF PREPAID WIRELESS TELECOMMUNICATIONS SERVICE FROM A VENDOR FOR ANY PURPOSE OTHER THAN RESALE. EACH INDIVIDUAL PREPAID TELECOMMUNICATION DEVICE, ADDITION OF MINUTES OR ADDITION OF FUNDS SHALL CONSTITUTE A SEPARATE TRANSACTION.

(6) "VENDOR" MEANS A PERSON WHO SELLS PREPAID WIRELESS TELECOMMUNICATIONS SERVICE TO ANOTHER PERSON.

(7) "WIRELESS TELECOMMUNICATIONS SERVICE" MEANS COMMERCIAL MOBILE RADIO SERVICE AS DEFINED IN SECTION 20.3 OF TITLE 47 OF THE CODE OF FEDERAL REGULATIONS, AS AMENDED.

(B)(1) A SURCHARGE ON PREPAID WIRELESS COMMUNICATION SERVICE PROVIDED TO A CONSUMER IS IMPOSED AT A RATE OF ONE DOLLAR PER RETAIL TRANSACTION OVER TEN DOLLARS, AND THAT RATE WHICH MAY BE IMPOSED BY LOCAL LAW PURSUANT TO SECTION THREE HUNDRED THREE OF THE COUNTY LAW.

(2) A VENDOR CONDUCTING A RETAIL TRANSACTION FOR A PREPAID WIRELESS TELECOMMUNICATIONS DEVICE, OR FOR THE ADDITION OF MINUTES OR FUNDS TO A PREPAID WIRELESS TELECOMMUNICATIONS DEVICE, SHALL ACT AS A COLLECTION AGENT FOR THE STATE FOR THE COLLECTION OF THE SURCHARGE. THE AMOUNT OF THE SURCHARGE SHALL BE EITHER SEPARATELY STATED ON THE INVOICE, RECEIPT OR OTHER SALES DOCUMENT THAT IS PROVIDED TO THE CONSUMER, OR OTHERWISE DISCLOSED TO THE CONSUMER. THE SURCHARGE SHALL BE COLLECTED BY THE VENDOR ON ALL POINT OF SALE RETAIL TRANSACTIONS WITHIN NEW YORK STATE, AND FOR ALL INTERNET, PHONE AND OTHER REMOTE RETAIL TRANSACTIONS, OTHER THAN FOR RESALE, THE SURCHARGE SHALL BE COLLECTED WHEN THE BILLING ADDRESS FOR THE PAYMENT METHOD OR THE SHIPPING ADDRESS ARE WITHIN NEW YORK STATE.

(3) THE AMOUNT OF THE SURCHARGE THAT IS COLLECTED BY A VENDOR FROM A CONSUMER, IF SUCH AMOUNT IS SEPARATELY STATED ON AN INVOICE, RECEIPT OR OTHER SALES DOCUMENT PROVIDED TO THE CONSUMER BY THE VENDOR, 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 THE STATE, OR ANY INTERGOVERNMENTAL AGENCY.

(4) SURCHARGE RECEIPTS COLLECTED BY VENDORS SHALL BE REMITTED TO THE COMMISSIONER AT THE SAME TIME AND IN THE SAME MANNER AS PRESCRIBED IN PART FOUR OF THIS ARTICLE. THOSE PORTIONS OF THE RECEIPTS ATTRIBUTABLE TO THE SURCHARGE ESTABLISHED UNDER SECTION TWELVE HUNDRED NINETEEN OF THIS CHAPTER SHALL BE HANDLED BY THE COMMISSIONER IN THE SAME MANNER AS PRESCRIBED IN SECTION TWELVE HUNDRED SIXTY-ONE OF THIS CHAPTER.

(5) EACH VENDOR IS ENTITLED TO RETAIN, AS AN ADMINISTRATIVE FEE, AN AMOUNT EQUAL TO TWO PERCENT OF FIFTY-EIGHT AND THREE-TENTHS PERCENT OF THE TOTAL COLLECTIONS OF THE SURCHARGE IMPOSED BY THIS SECTION, PROVIDED THAT THE VENDOR FILES ANY REQUIRED RETURN AND REMITS THE SURCHARGE DUE TO THE COMMISSIONER ON OR BEFORE ITS DUE DATE.

(6) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, ALL SURCHARGE MONIES COLLECTED AND RECEIVED BY THE COMMISSIONER UNDER THIS SECTION SHALL BE DEPOSITED DAILY TO THE CREDIT OF THE COMPTROLLER WITH THOSE RESPONSIBLE BANKS, BANKING HOUSES OR TRUST COMPANIES THE COMPTROLLER MAY DESIGNATE. THOSE DEPOSITS SHALL BE KEPT SEPARATE AND APART FROM ALL OTHER MONIES IN THE POSSESSION OF THE COMPTROLLER. THE COMPTROLLER SHALL REQUIRE ADEQUATE SECURITY FROM ALL SUCH DEPOSITORIES. THE COMPTROLLER SHALL, ON OR BEFORE THE TENTH DAY OF EACH MONTH, PAY ALL SURCHARGE MONIES COLLECTED AND RECEIVED UNDER THIS SECTION INTO THE STATEWIDE PUBLIC SAFETY COMMUNICATIONS ACCOUNT, CREATED PURSUANT TO SECTION NINETY-SEVEN-QQ OF THE STATE FINANCE LAW.

(7) THE STATE OF NEW YORK AND ANY OF ITS AGENCIES, INSTRUMENTALITIES AND POLITICAL SUBDIVISIONS ARE EXEMPT FROM THE SURCHARGE IMPOSED BY THIS SECTION.

S 2. The tax law is amended by adding a new section 1219 to read as follows:

S 1219. PUBLIC SAFETY COMMUNICATIONS SURCHARGE ON PREPAID WIRELESS TELECOMMUNICATIONS SERVICES. (A) NOTWITHSTANDING THE PROVISIONS OF ANY LAW TO THE CONTRARY, ANY COUNTY OF THIS STATE, ACTING THROUGH ITS BOARD, IS HEREBY AUTHORIZED AND EMPOWERED TO ADOPT, AMEND OR REPEAL LOCAL LAWS TO IMPOSE A SURCHARGE IN AN AMOUNT NOT TO EXCEED THIRTY CENTS ON EACH "RETAIL TRANSACTION" FOR "PREPAID WIRELESS TELECOMMUNICATIONS SERVICE", AS SUCH TERMS ARE DEFINED IN SECTION ELEVEN HUNDRED FIFTY-FIVE OF THIS CHAPTER, FROM A VENDOR FOR ANY PURPOSE OTHER THAN RESALE; PROVIDED, HOWEVER, THAT ANY COUNTY THAT IS A CITY HAVING A POPULATION OF ONE MILLION OR MORE IS HEREBY AUTHORIZED AND EMPOWERED TO ADOPT, AMEND OR REPEAL LOCAL LAWS TO IMPOSE A SURCHARGE IN AN AMOUNT NOT TO EXCEED ONE DOLLAR PER RETAIL TRANSACTION.

(B) ANY SUCH LOCAL LAW SHALL STATE THE AMOUNT OF THE SURCHARGE, THE DATE ON WHICH THE VENDOR SHALL BEGIN TO ADD SUCH SURCHARGE TO THE RETAIL TRANSACTIONS OF ITS CUSTOMERS AND, TO THE EXTENT PRACTICABLE, THE DATE ON WHICH SUCH E911 SERVICE IS TO BEGIN. SUCH LOCAL LAW MAY AUTHORIZE THE SERVICE SUPPLIER TO BEGIN BILLING ITS CUSTOMERS FOR SUCH SURCHARGE PRIOR TO THE DATE THE E911 SYSTEM SERVICE IS TO BEGIN.

(C) ANY VENDOR WITHIN A MUNICIPALITY 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 SURCHARGE TO RETAIL TRANSACTIONS OF ITS CUSTOMERS OR PRIOR TO ANY MODIFICATION TO OR CHANGE IN THE SURCHARGE AMOUNT.

(D) THE SURCHARGE PROVIDED FOR HEREIN SHALL BE COLLECTED PURSUANT TO SECTION ELEVEN HUNDRED FIFTY-FIVE OF THIS CHAPTER.

S 3. Subdivision (a) of section 1261 of the tax law, as amended by chapter 182 of the laws of 2005, is amended to read as follows:

(a) All taxes, penalties and interest imposed by cities, counties or school districts under the authority of section twelve hundred ten, twelve hundred eleven, twelve hundred twelve [or], twelve hundred twelve-A, OR TWELVE HUNDRED NINETEEN of this article, which are collected by the commissioner, shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the state comptroller, to the credit of the comptroller, in trust for the cities, counties or school districts imposing the tax or for (i) the Nassau county interim finance authority or (ii) the Buffalo fiscal stability authority or (iii) the Erie county fiscal stability authority, created by the public authorities law, (i) to the extent that net collections from taxes imposed by Nassau county are payable to the Nassau county interim finance authority or (ii) to the extent that net collections from taxes imposed by Erie county or by the city of Buffalo are payable to the Buffalo fiscal stability authority or (iii) to the extent that net collections from taxes imposed by Erie county are payable to the Erie county fiscal stability authority, or for any public benefit corporation to which the tax may be payable pursuant to law. Such deposits and deposits received pursuant to subdivision (b) of section twelve hundred fifty-two of this article shall be kept in trust and separate and apart from all other monies in the possession of the comptroller. The comptroller shall require adequate security from all such depositories of such revenue collected by the commissioner, including the deposits received pursuant to subdivision (b) of section twelve hundred fifty-two of this article. Any amount payable to such authorities pursuant to the public authorities law shall, at the time it is otherwise payable to (i) Nassau county, (ii) Erie county or the city of

Buffalo, or (iii) Erie county, respectively, as specified in this section, be paid instead to such respective authority. Any amount payable to a public benefit corporation pursuant to law shall, at the time it is otherwise payable to the taxing jurisdiction as specified in this section, be paid instead to such public benefit corporation.

S 4. The county law is amended by adding a new section 308-z to read as follows:

S 308-Z. ESTABLISHMENT OF COUNTIES OF HAMILTON, JEFFERSON, LEWIS, NIAGARA, ONEIDA, OSWEGO, SCHOHARIE, AND ST. LAWRENCE WIRELESS SURCHARGE. 1. NOTWITHSTANDING THE PROVISIONS OF ANY LAW TO THE CONTRARY, THE COUNTIES OF HAMILTON, JEFFERSON, LEWIS, NIAGARA, ONEIDA, OSWEGO, SCHOHARIE, AND ST. LAWRENCE, 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 COUNTIES OF HAMILTON, JEFFERSON, LEWIS, NIAGARA, ONEIDA, OSWEGO, SCHOHARIE, AND ST. LAWRENCE. 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) THE 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. 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 COUNTIES OF HAMILTON, JEFFERSON, LEWIS, NIAGARA, ONEIDA, OSWEGO, SCHOHARIE, AND ST. LAWRENCE 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 SURCHARGE TO THE BILLINGS OF ITS CUSTOMERS OR PRIOR TO ANY MODIFICATION TO OR CHANGE IN THE SURCHARGE AMOUNT.

2. EACH WIRELESS COMMUNICATIONS SERVICE SUPPLIER SERVING THE COUNTIES OF HAMILTON, JEFFERSON, LEWIS, NIAGARA, ONEIDA, OSWEGO, SCHOHARIE, AND ST. LAWRENCE 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 HAMILTON, JEFFERSON, LEWIS, NIAGARA, ONEIDA, OSWEGO, SCHOHARIE, AND ST. LAWRENCE EVERY MONTH. SUCH FUNDS SHALL BE REMITTED NO LATER THAN THIRTY DAYS AFTER THE LAST BUSINESS DAY OF THE MONTH.

3. 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.

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

5. EACH WIRELESS COMMUNICATIONS SERVICE CUSTOMER WHO IS SUBJECT TO THE PROVISIONS OF THIS SECTION SHALL BE LIABLE TO DELAWARE COUNTY FOR THE SURCHARGE UNTIL IT HAS BEEN PAID TO THE COUNTIES OF HAMILTON, JEFFERSON, LEWIS, NIAGARA, ONEIDA, OSWEGO, SCHOHARIE, AND ST. LAWRENCE EXCEPT THAT PAYMENT TO A WIRELESS COMMUNICATIONS SERVICE SUPPLIER IS SUFFICIENT TO RELIEVE THE CUSTOMER FROM FURTHER LIABILITY FOR SUCH SURCHARGE.

6. 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 COUNTIES OF HAMILTON, JEFFERSON, LEWIS, NIAGARA, ONEIDA, OSWEGO, SCHOHARIE, AND ST. LAWRENCE, IT SHALL ALSO PROVIDE THE COUNTIES OF HAMILTON, JEFFERSON, LEWIS, NIAGARA, ONEIDA, OSWEGO, SCHOHARIE, AND ST. LAWRENCE 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.

7. EACH WIRELESS COMMUNICATIONS SERVICE SUPPLIER SHALL ANNUALLY PROVIDE TO THE COUNTIES OF HAMILTON, JEFFERSON, LEWIS, NIAGARA, ONEIDA, OSWEGO, SCHOHARIE, AND ST. LAWRENCE AN ACCOUNTING OF THE SURCHARGE AMOUNTS BILLED AND COLLECTED. ALL SURCHARGE MONIES REMITTED TO THE COUNTIES OF HAMILTON, JEFFERSON, LEWIS, NIAGARA, ONEIDA, OSWEGO, SCHOHARIE, AND ST. LAWRENCE 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 COUNTIES OF HAMILTON, JEFFERSON, LEWIS, NIAGARA, ONEIDA, OSWEGO, SCHOHARIE, AND ST. LAWRENCE 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 5. Paragraph (a) of subdivision 2 and paragraph (c) of subdivision 6 of section 186-f of the tax law, paragraph (a) of subdivision 2 as added by section 3 of part B of chapter 56 of the laws of 2009 and paragraph (c) of subdivision 6 as amended by section 38 of part B of chapter 56 of the laws of 2010, are amended to read as follows:

(a) A surcharge on wireless communications service provided to a wireless communications customer with a place of primary use in this state is imposed at the rate of one dollar [and twenty cents] per month on each wireless communications device in service during any part of each month. The surcharge must be reflected and made payable on bills rendered to the wireless communications customer for wireless communication service.

(c) Up to the sum of [seventy-five] ONE HUNDRED AND FIFTEEN million dollars annually may be used for the provision of grants or reimbursements to counties for the development, consolidation, or operation of public safety communications systems or networks designed to support statewide interoperable communications for first responders, to be distributed pursuant to standards and guidelines issued by the state. Annual grants may consider costs borne by a municipality related to the issuance of local public safety communications bonds pursuant to section twenty-four hundred thirty-two of the public authorities law, when the municipality has qualified as an approved participant in a statewide interoperable communications system under the standards and guidelines issued by the state, and maintains compliance with such standards and guidelines. The grant amount will be prescribed pursuant to an agreement with the municipality, and may not exceed thirty percent of the annual cost borne by the municipality in relation to such bonds;

S 6. This act shall take effect immediately; provided, however, that:

a. subdivisions one, two and three of this act shall take effect on the ninetieth day after it shall have become a law;

b. the provisions of subdivision 1 of section 308-z of the county law, as added by section four 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 such section; provided further, that a wireless communications service supplier may treat the address used by such supplier for any wireless communications customer under a service contract 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.