

STATE OF NEW YORK

3086

2017-2018 Regular Sessions

IN ASSEMBLY

January 26, 2017

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:

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

PART VI

PUBLIC SAFETY COMMUNICATIONS SURCHARGE ON PREPAID

WIRELESS TELECOMMUNICATIONS SERVICES

6 Section 1155. Public safety communications surcharge on prepaid wireless
7 telecommunications services.

8 § 1155. Public safety communications surcharge on prepaid wireless
9 telecommunications services. (a) As used in this section, where not
10 otherwise specifically defined and unless a different meaning is clearly
11 required:

12 (1) "Consumer" means a person who purchases prepaid wireless telecom-
13 munications service in a retail transaction.

14 (2) "Surcharge" means the public safety communications surcharge on
15 prepaid wireless telecommunications services that is required to be
16 collected by a vendor from a consumer in the amount established in
17 subdivision (b) of this section.

18 (3) "Prepaid wireless telecommunications service" means a wireless
19 telecommunications service that allows a caller to dial 911 to access
20 the 911 system, which service must be paid for in advance and is sold in
21 predetermined units or dollars of which the number declines with use in
22 a known amount.

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

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1 (4) "Provider" means a person that provides prepaid wireless telecom-
2 munications service pursuant to a license issued by the federal communi-
3 cations commission.

4 (5) "Retail transaction" means the purchase of prepaid wireless tele-
5 communications service from a vendor for any purpose other than resale.
6 Each individual prepaid telecommunication device, addition of minutes or
7 addition of funds shall constitute a separate transaction.

8 (6) "Vendor" means a person who sells prepaid wireless telecommuni-
9 cations service to another person.

10 (7) "Wireless telecommunications service" means commercial mobile
11 radio service as defined in section 20.3 of title 47 of the code of
12 federal regulations, as amended.

13 (b)(1) A surcharge on prepaid wireless communication service provided
14 to a consumer is imposed at a rate of one dollar per retail transaction
15 over ten dollars, and that rate which may be imposed by local law pursu-
16 ant to section three hundred three of the county law.

17 (2) A vendor conducting a retail transaction for a prepaid wireless
18 telecommunications device, or for the addition of minutes or funds to a
19 prepaid wireless telecommunications device, shall act as a collection
20 agent for the state for the collection of the surcharge. The amount of
21 the surcharge shall be either separately stated on the invoice, receipt
22 or other sales document that is provided to the consumer, or otherwise
23 disclosed to the consumer. The surcharge shall be collected by the
24 vendor on all point of sale retail transactions within New York state,
25 and for all internet, phone and other remote retail transactions, other
26 than for resale, the surcharge shall be collected when the billing
27 address for the payment method or the shipping address are within New
28 York state.

29 (3) The amount of the surcharge that is collected by a vendor from a
30 consumer, if such amount is separately stated on an invoice, receipt or
31 other sales document provided to the consumer by the vendor, shall not
32 be included in the base for measuring any tax, fee, surcharge, or other
33 charge that is imposed by this state, any political subdivision of the
34 state, or any intergovernmental agency.

35 (4) Surcharge receipts collected by vendors shall be remitted to the
36 commissioner at the same time and in the same manner as prescribed in
37 part four of this article. Those portions of the receipts attributable
38 to the surcharge established under section twelve hundred nineteen of
39 this chapter shall be handled by the commissioner in the same manner as
40 prescribed in section twelve hundred sixty-one of this chapter.

41 (5) Each vendor is entitled to retain, as an administrative fee, an
42 amount equal to two percent of fifty-eight and three-tenths percent of
43 the total collections of the surcharge imposed by this section, provided
44 that the vendor files any required return and remits the surcharge due
45 to the commissioner on or before its due date.

46 (6) Notwithstanding any provision of law to the contrary, all
47 surcharge monies collected and received by the commissioner under this
48 section shall be deposited daily to the credit of the comptroller with
49 those responsible banks, banking houses or trust companies the comp-
50 troller may designate. Those deposits shall be kept separate and apart
51 from all other monies in the possession of the comptroller. The comp-
52 troller shall require adequate security from all such depositories. The
53 comptroller shall, on or before the tenth day of each month, pay all
54 surcharge monies collected and received under this section into the
55 statewide public safety communications account, created pursuant to
56 section ninety-seven-qq of the state finance law.

1 (7) The state of New York and any of its agencies, instrumentalities
2 and political subdivisions are exempt from the surcharge imposed by this
3 section.

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

6 § 1219. Public safety communications surcharge on prepaid wireless
7 telecommunications services. (a) Notwithstanding the provisions of any
8 law to the contrary, any county of this state, acting through its board,
9 is hereby authorized and empowered to adopt, amend or repeal local laws
10 to impose a surcharge in an amount not to exceed thirty cents on each
11 "retail transaction" for "prepaid wireless telecommunications service",
12 as such terms are defined in section eleven hundred fifty-five of this
13 chapter, from a vendor for any purpose other than resale; provided,
14 however, that any county that is a city having a population of one
15 million or more is hereby authorized and empowered to adopt, amend or
16 repeal local laws to impose a surcharge in an amount not to exceed one
17 dollar per retail transaction.

18 (b) Any such local law shall state the amount of the surcharge, the
19 date on which the vendor shall begin to add such surcharge to the retail
20 transactions of its customers and, to the extent practicable, the date
21 on which such E911 service is to begin. Such local law may authorize the
22 service supplier to begin billing its customers for such surcharge prior
23 to the date the E911 system service is to begin.

24 (c) Any vendor within a municipality which has imposed a surcharge
25 pursuant to the provisions of this section shall be given a minimum of
26 forty-five days written notice prior to the date it shall begin to add
27 such surcharge to retail transactions of its customers or prior to any
28 modification to or change in the surcharge amount.

29 (d) The surcharge provided for herein shall be collected pursuant to
30 section eleven hundred fifty-five of this chapter.

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

33 (a) All taxes, penalties and interest imposed by cities, counties or
34 school districts under the authority of section twelve hundred ten,
35 twelve hundred eleven, twelve hundred twelve ~~or~~, twelve hundred
36 twelve-A, or twelve hundred nineteen of this article, which are
37 collected by the commissioner, shall be deposited daily with such
38 responsible banks, banking houses or trust companies, as may be desig-
39 nated by the state comptroller, to the credit of the comptroller, in
40 trust for the cities, counties or school districts imposing the tax or
41 for (i) the Nassau county interim finance authority or (ii) the Buffalo
42 fiscal stability authority or (iii) the Erie county fiscal stability
43 authority, created by the public authorities law, (i) to the extent that
44 net collections from taxes imposed by Nassau county are payable to the
45 Nassau county interim finance authority or (ii) to the extent that net
46 collections from taxes imposed by Erie county or by the city of Buffalo
47 are payable to the Buffalo fiscal stability authority or (iii) to the
48 extent that net collections from taxes imposed by Erie county are paya-
49 ble to the Erie county fiscal stability authority, or for any public
50 benefit corporation to which the tax may be payable pursuant to law.
51 Such deposits and deposits received pursuant to subdivision (b) of
52 section twelve hundred fifty-two of this article shall be kept in trust
53 and separate and apart from all other monies in the possession of the
54 comptroller. The comptroller shall require adequate security from all
55 such depositories of such revenue collected by the commissioner, includ-
56 ing the deposits received pursuant to subdivision (b) of section twelve

1 hundred fifty-two of this article. Any amount payable to such authori-
2 ties pursuant to the public authorities law shall, at the time it is
3 otherwise payable to (i) Nassau county, (ii) Erie county or the city of
4 Buffalo, or (iii) Erie county, respectively, as specified in this
5 section, be paid instead to such respective authority. Any amount paya-
6 ble to a public benefit corporation pursuant to law shall, at the time
7 it is otherwise payable to the taxing jurisdiction as specified in this
8 section, be paid instead to such public benefit corporation.

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

11 § 308-z. Establishment of counties of Hamilton, Jefferson, Lewis,
12 Niagara, Oneida, Oswego, Schoharie, and St. Lawrence wireless surcharge.

13 1. Notwithstanding the provisions of any law to the contrary, the coun-
14 ties of Hamilton, Jefferson, Lewis, Niagara, Oneida, Oswego, Schoharie,
15 and St. Lawrence, acting through its local county legislative body, is
16 hereby authorized and empowered to adopt, amend or repeal local laws to
17 impose a surcharge in an amount not to exceed thirty cents per month on
18 wireless communications service in the counties of Hamilton, Jefferson,
19 Lewis, Niagara, Oneida, Oswego, Schoharie, and St. Lawrence. The
20 surcharge shall be imposed on each wireless communications device and
21 shall be reflected and made payable on bills rendered for wireless
22 communications service that is provided to a customer whose place of
23 primary use is within the county. For purposes of this section, the term
24 "place of primary use" shall mean the street address that is represen-
25 tative of where the customer's use of the wireless communications
26 service primarily occurs, which address must be: (a) the residential
27 street address or the primary business street address of the customer;
28 and (b) within the licensed service area of the wireless communications
29 service supplier. Any local law adopted pursuant to this section shall
30 state the amount of the surcharge and the date on which the wireless
31 communications service supplier shall begin to add such surcharge to the
32 billings of its customers. Any wireless communications service supplier
33 within the counties of Hamilton, Jefferson, Lewis, Niagara, Oneida,
34 Oswego, Schoharie, and St. Lawrence which has imposed a surcharge pursu-
35 ant to the provisions of this section shall be given a minimum of
36 forty-five days written notice prior to the date it shall begin to add
37 such surcharge to the billings of its customers or prior to any modifi-
38 cation to or change in the surcharge amount.

39 2. Each wireless communications service supplier serving the counties
40 of Hamilton, Jefferson, Lewis, Niagara, Oneida, Oswego, Schoharie, and
41 St. Lawrence shall act as collection agent for the county and shall
42 remit the funds collected pursuant to a surcharge imposed under the
43 provisions of this section to the chief fiscal officer of Hamilton,
44 Jefferson, Lewis, Niagara, Oneida, Oswego, Schoharie, and St. Lawrence
45 every month. Such funds shall be remitted no later than thirty days
46 after the last business day of the month.

47 3. Each wireless communications service supplier shall be entitled to
48 retain, as an administrative fee, an amount equal to two percent of its
49 collections of a surcharge imposed under the provisions of this section.

50 4. Any surcharge required to be collected by a wireless communications
51 service supplier shall be added to and stated separately in its billings
52 to customers.

53 5. Each wireless communications service customer who is subject to the
54 provisions of this section shall be liable to Delaware county for the
55 surcharge until it has been paid to the counties of Hamilton, Jefferson,
56 Lewis, Niagara, Oneida, Oswego, Schoharie, and St. Lawrence except that

1 payment to a wireless communications service supplier is sufficient to
2 relieve the customer from further liability for such surcharge.

3 6. No wireless communications service supplier shall have a legal
4 obligation to enforce the collection of any surcharge imposed under the
5 provisions of this section, provided, however, that whenever the wire-
6 less communications service supplier remits the funds collected to the
7 counties of Hamilton, Jefferson, Lewis, Niagara, Oneida, Oswego, Scho-
8 harie, and St. Lawrence, it shall also provide the counties of Hamilton,
9 Jefferson, Lewis, Niagara, Oneida, Oswego, Schoharie, and St. Lawrence
10 with the name and address of any customer refusing or failing to pay a
11 surcharge imposed under the provisions of this section and shall state
12 the amount of such surcharge remaining unpaid.

13 7. Each wireless communications service supplier shall annually
14 provide to the counties of Hamilton, Jefferson, Lewis, Niagara, Oneida,
15 Oswego, Schoharie, and St. Lawrence an accounting of the surcharge
16 amounts billed and collected. All surcharge monies remitted to the
17 counties of Hamilton, Jefferson, Lewis, Niagara, Oneida, Oswego, Scho-
18 harie, and St. Lawrence by a wireless communications service supplier
19 shall be expended only upon authorization of the local county legisla-
20 tive body and only for payment of eligible wireless 911 service costs as
21 defined in subdivision sixteen of section three hundred twenty-five of
22 this chapter. The counties of Hamilton, Jefferson, Lewis, Niagara, Onei-
23 da, Oswego, Schoharie, and St. Lawrence shall separately account for and
24 keep adequate books and records of the amount and source of all such
25 monies and of the amount and object or purpose of all expenditures ther-
26 eof. If, at the end of any fiscal year, the total amount of all such
27 monies exceeds the amount necessary for payment of the above mentioned
28 costs in such fiscal year, such excess shall be reserved and carried
29 over for the payment of those costs in the following fiscal year.

30 § 5. Paragraph (a) of subdivision 2 and paragraph (c) of subdivision 6
31 of section 186-f of the tax law, paragraph (a) of subdivision 2 as added
32 by section 3 of part B of chapter 56 of the laws of 2009 and paragraph
33 (c) of subdivision 6 as amended by section 38 of part B of chapter 56 of
34 the laws of 2010, are amended to read as follows:

35 (a) A surcharge on wireless communications service provided to a wire-
36 less communications customer with a place of primary use in this state
37 is imposed at the rate of one dollar [~~and twenty cents~~] per month on
38 each wireless communications device in service during any part of each
39 month. The surcharge must be reflected and made payable on bills
40 rendered to the wireless communications customer for wireless communi-
41 cation service.

42 (c) Up to the sum of [~~seventy-five~~] one hundred and fifteen million
43 dollars annually may be used for the provision of grants or reimburse-
44 ments to counties for the development, consolidation, or operation of
45 public safety communications systems or networks designed to support
46 statewide interoperable communications for first responders, to be
47 distributed pursuant to standards and guidelines issued by the state.
48 Annual grants may consider costs borne by a municipality related to the
49 issuance of local public safety communications bonds pursuant to section
50 twenty-four hundred thirty-two of the public authorities law, when the
51 municipality has qualified as an approved participant in a statewide
52 interoperable communications system under the standards and guidelines
53 issued by the state, and maintains compliance with such standards and
54 guidelines. The grant amount will be prescribed pursuant to an agreement
55 with the municipality, and may not exceed thirty percent of the annual
56 cost borne by the municipality in relation to such bonds;

1 § 6. This act shall take effect immediately; provided, however, that:
2 a. sections one, two and three of this act shall take effect on the
3 ninetieth day after it shall have become a law;
4 b. the provisions of subdivision 1 of section 308-z of the county law,
5 as added by section four of this act shall apply to bills rendered to
6 wireless communications service customers by a wireless communications
7 service supplier on and after the expiration of the notice period
8 required pursuant to the provisions of such section; provided further,
9 that a wireless communications service supplier may treat the address
10 used by such supplier for any wireless communications customer under a
11 service contract or agreement in effect on the effective date of the
12 local law imposing such surcharge, as that wireless communications
13 customer's place of primary use for the remaining term of such service
14 contract or agreement, excluding any extension or renewal of such
15 service contract or agreement, for purposes of determining the taxing
16 jurisdiction with respect to taxes on wireless communications service.