

Establishing and Continuing Your County 9-1-1 Cellular Surcharge

**Webinar
June 15, 2017**

Presented by:

NYS Department of Taxation and Finance

New York State Association of Counties

Current Law – Wireless Surcharge

- Current locally-administered wireless surcharge
 - Authorized most counties and NYC to impose the surcharge on postpaid wireless communications service
 - Each locality individually administered its own surcharge
 - Up to \$.30 per month per device
 - Wireless carriers retain 2% of collections

New Law – Wireless Surcharge

- New Tax Law § 186-g surcharges
 - Replaces County Law authority for post-paid surcharge with Tax Law authority for pre- and post-paid surcharges
 - Incorporates current County Law revenue spending provisions
 - Applies to NYC and all counties outside NYC
 - Localities must impose both prepaid and postpaid surcharges
 - Surcharge rates
 - Postpaid: \$.30 per month per device
 - Prepaid: \$.30 per retail sale
 - State will collect and administer surcharges consistent with sales tax rules (Tax Law articles 28 & 29)
 - Sellers/suppliers can retain 3% of collections
 - Sellers/suppliers must timely file returns

What Localities Must Do Under New Surcharge Law

- Localities must enact a local law, ordinance or resolution to impose the new surcharges
 - The enactment would repeal the current surcharge and adopt the new state-administered surcharges
 - Localities are now authorized to adopt enactment to take effect on or after December 1, 2017
 - The new surcharges can be imposed starting on the 1st day of any sales tax quarter on or after December 1, 2017
 - Local post-paid surcharge authority under County Law ends November 30, 2017, so localities should adopt an enactment effective December 1, 2017, to continue postpaid collections without interruption

What Localities Must Do Under New Surcharge Law

- Local enactment submission process
 - At least 90 days prior to the effective date (or 30 days with waiver request), mail to Tax Department by certified or registered mail:
 - Certified copy of enactment with the clerk's raised seal; and
 - Waiver request, if applicable
 - Mailing should be addressed to:

Deborah R. Liebman, Esq.

Deputy Counsel

New York State Department of Taxation and Finance

Building 9, Room 228

W.A. Harriman State Campus

Albany, New York 12227

What Localities Must Do Under New Surcharge Law

- Within five days of enactment, the locality must also file certified copies with:
 - Secretary of State;
 - State Comptroller; and
 - County or City clerk (as the case may be)
- For December 1, 2017, effective date:
 - Mail by September 2, 2017 (90 days prior)
 - Tax Dept can waive the 90-day mailing deadline down to 30 days – i.e., November 1, 2017 – upon written request

9-1-1 Prepaid Surcharge - Fiscals

- **DOB assumptions on \$.90 state prepaid surcharge**
 - Used 2011 FCC data for total NY mobile telephone subscribers, grown at 2% annually to today (estimated 2017 total is 22.5M)
 - Based on Wireless Market Statistics, used the assumption that 23% of these subscribers are prepaid
 - Assumed 6 transactions annually per subscriber, balancing those that might pay once per month versus those that might pay once per year
 - Used a 95 percent collection rate to account for the vendor credit and some non-compliance
 - Estimate of \$26m when fully effective (90 cent State surcharge)
 - Assumed all localities would opt in
 - \$9m local estimate (30 cent local surcharge)

9-1-1 Prepaid Surcharge - Fiscals

- DOB assumptions on \$.90 state prepaid surcharge

22,500,000 total subscriptions **x** .23 (% of prepaid devices) = 5,175,000 prepaid

5,175,000 prepaid **x** \$5.40 (6 transactions @ \$.90) = \$27,945,000 total

\$27,945,000 **x** .95 (collection rate) = \$26,547,750 full annual state receipts from prepaid

9-1-1 Prepaid Surcharge - Fiscals

- Using DOB assumptions for county fiscal estimates on prepaid
 1. Convert fiscal estimates to a per capita \$ amount
 - \$26.5 million / 19.8 million people = \$1.34 per person @ \$.90
 - @ \$.30 surcharge, the per capita amount is about \$.45 per person
 - *According to cellular industry data, cellular subscriptions do have some correlation to demographics such as income, higher income = more subscriptions in a community*
 - *Also may want to consider cellular signal strength, weak signal could negatively impact number of subscriptions*
 2. Use 23 percent (or 20 percent) prepaid market penetration estimate as a factor for your current postpaid surcharge collections
 - If current postpaid collections are \$100,000, then multiply those collections by .25 (20/80) for an estimate of prepaid collections = \$25,000
 3. Do both calculations and split the difference

9-1-1 Prepaid Surcharge - Fiscals

- Using DOB assumptions for county fiscal estimates on postpaid – for a county that currently does not have a postpaid cellular surcharge
 1. Convert fiscal estimates to a per capita \$ amount
 - \$26.5 million / 19.8 million people = \$1.34 per person @ \$.90
 - @ \$.30 surcharge, the per capita amount is about \$.45 per person
 - *According to cellular industry data, cellular subscriptions do have some correlation to demographics such as income, higher income = more subscriptions in a community*
 - *Also may want to consider cellular signal strength, weak signal could negatively impact number of subscriptions*
 2. Use 23 percent (or 20 percent) prepaid market penetration estimate as a factor for your proposed postpaid surcharge collections
 - If postpaid collections are \$100,000, then multiply those collections by .25 (20/80) for an estimate of prepaid collections = \$25,000
 3. Compare yourself to a similar sized county, population and demographics, to determine what your postpaid/prepaid collections might be

9-1-1 Prepaid Surcharge - Fiscals

- **DOB assumptions are consistent with NYSAC analysis**
 - On total cellular subscriptions in New York State
 - Prepaid market share penetration
 - Collection rates
 - Slightly more conservative on annual transactions per subscriber
 - Overall, DOB tends to be conservative on “new” fiscal estimates
 - Cellular industry thinks DOB estimates are conservative on a full annual basis

Contact Information

Mary Ellen Ladouceur

Principal Attorney, Transaction Tax Practice Group
Office of Counsel

New York State Department of Taxation and Finance
(518) 457-2070 | MaryEllen.Ladouceur@tax.ny.gov

Dave Lucas

Director, Finance & Intergovernmental Affairs

New York State Association of Counties
(518) 465-1473 ext. 222 | Dlucas@nysac.org