

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-09(16)C
Corporation Tax
September 21, 2009

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C090619A

Petitioner, [REDACTED], requests an Advisory Opinion about whether its two-way paging services are subject to the New York State Public Safety Communications Surcharge. We conclude that they are not.

Facts

Petitioner is a provider of one-way and two-way paging and various other wireless services. The particular service about which Petitioner inquires is a two-way paging service that uses a paging device with enhanced text display and full keypads. The service can be used in two ways. The “dispatch” service is often used within organizations (such as medical, business or government entities), and allows direct two-way text communications among users within that organization. This aspect of the service is provided entirely over Petitioner’s Commercial Mobile Radio Service (CMRS) network, and does not utilize the Public Switched Telephone Network (PSTN). The service can also be used to receive in-bound pages from persons outside the organization. The in-bound pages are received from users of the PSTN at one of Petitioner’s paging terminals. Once the message is received by the paging terminal, the PSTN user’s call is terminated, and a second transmission is initiated between the paging terminal and the recipient’s paging device over Petitioner’s CMRS network. The paging devices do not allow voice communications and do not allow the user to connect with other types of wireless devices or to call a phone number associated with the PSTN. Petitioner’s paging devices are not capable of dialing a phone number, including 911, and are not capable of real-time communication with a 911 dispatcher.

Analysis

Tax Law section 186-f imposes the Public Safety Communications Surcharge on wireless communications service provided to a customer with a place of primary use in New York State.¹ The Surcharge is imposed at a rate of \$1.20 per month for each wireless device in service during any part of the month. Wireless communications service is defined as:

[A]ll commercial mobile services, as that term is defined in [USC §332(d)], as amended from time to time, including, but not limited to, all broadband personal communications services, wireless radio telephone services, geographic area specialized and enhanced specialized mobile radio services, and incumbent-wide area specialized mobile radio licenses, which offer real time, two-way voice or data service that is interconnected with the public switched telephone network or otherwise provides access to emergency communication services.

¹ Prior to September 1, 2009, the State Wireless Communication Service Surcharge was imposed by section 309 of the County Law. Effective September 1, 2009, County Law section 309 was repealed and replaced with the Public Safety Communications Surcharge in new Tax Law section 186-f. County Law section 309 and Tax Law section 186-f are substantially similar and the relevant portions of the law for purposes of this Advisory Opinion are unchanged.

Tax Law § 186-f.1(d). The Tax Department previously concluded that the Surcharge applies to “two-way beepers, and other devices . . . that have two-way wireless communications capabilities over a public switched network.” *State Wireless Communications Service Surcharge*, TSB-M-02(5)M; *see also Public Safety Communications Surcharge*, TSB-M-09(8)C. In contrast, the service about which Petitioner inquires is not interconnected with the PSTN and does not allow users to connect directly to emergency communication services. Accordingly, the service Petitioner describes is not subject to the Public Safety Communications Surcharge imposed by Tax Law section 186-f.

DATED: September 21, 2009

/S/
Jonathan Pessen
Director of Advisory Opinions
Office of Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.