



Treatment of Sales-for-Resale Under Section 186-e of the Tax Law

General

Every provider of telecommunication services is subject to tax under section 186-e of the Tax Law, Excise Tax on Telecommunication Services. Section 186-e imposes an excise tax on each charge from (1) any intrastate telecommunication services; (2) any interstate or international telecommunication services that originate or terminate in New York State and are charged to a service address in New York State (regardless of where the amounts charged are actually billed or ultimately paid); (3) private telecommunication services attributable to New York State; and (4) mobile telecommunications services provided by a home service provider where the mobile telecommunications customer's place of primary use is in New York State.

Telecommunication services means telephony or telegraphy, or telephone or telegraph service, including but not limited to any transmission of the following: voice, image, data, information, and paging, through the use of wire, cable, fiber-optic, laser, microwave, radio wave, satellite, or similar media or any combination thereof. *Telecommunication services* also include services that are not telecommunication services as such, but are (1) ancillary to the provision of telephone service (for example, dial tone, basic service, directory information, call forwarding, caller-identification, call-waiting, and supplementary services) and (2) services that are provided with telecommunication services. The charges from equipment provided with any telecommunication service (beepers, telephones, fax machines, modems, etc.) are also subject to tax under section 186-e. The term *telecommunication services* does not apply to separately stated charges for a service that alters the substantive content of the message received from that sent.

Telecommunication services does not include television or radio programming transmitted to subscribers by cable television service and internet access services (including incidental services furnished as part of a combined internet access charge, such as communication/navigation software, email privileges, news headlines, and certain Web site services).

Sale-for-resale exclusion

Section 186-e provides that charges for certain sales-for-resale of telecommunication services are excluded from gross receipts subject to tax. For other sales-for-resale not qualifying for the exclusion, a credit is allowed.

Two criteria must be met to qualify for the sale-for-resale exclusion.

1. The purchaser (reseller) must sell the purchased telecommunication service as a telecommunication service.

2. The purchaser (reseller) must be a local carrier or an interexchange carrier. A facilities-based cellular common carrier is considered to be a local carrier or an interexchange carrier for purposes of this provision regardless of whether that carrier is providing local or interexchange service.

Section 186-e defines *local carrier* to mean any provider of telecommunication services for hire to the public that is subject to the supervision of the Public Service Commission (PSC) and is engaged in providing carrier access service to a switched network.

Interexchange carrier means any provider of telecommunication services between two or more exchanges that qualifies as a common carrier; that is, any person engaged as a common carrier for hire in intrastate, interstate, or foreign telecommunication services.

Generally, a provider of telecommunication services may accept a Certificate of Public Convenience and Necessity issued by the PSC as evidence that a particular purchaser (reseller) qualifies as a local carrier, interexchange carrier, or facilities-based cellular common carrier and is eligible for the resale exclusion.

Note: *The sale-for-resale exclusion does not apply if the purchaser does not resell the service as a telecommunication service, even if the purchaser has a Certificate of Public Convenience and Necessity indicating that it is a local carrier, an interexchange carrier, or a facilities-based cellular common carrier. For example, charges for telecommunication services sold to a company that uses this service to provide an online entertainment service are not eligible for the exclusion. The company selling the telecommunication service to the online entertainment company must include the charges in gross receipts subject to tax.*

Resale credit

Resellers functioning as providers of customer owned currency operated telephones (COCOTS), cellular resellers, providers of paging services, hotels, motels, apartment buildings, and hospitals are not considered interexchange carriers or local carriers for purposes of the sale-for-resale exclusion. Providers of telecommunications services may not exclude from their gross receipts the charges from sales-for-resale to such resellers. Instead, when the resellers resell the telecommunication services, they are allowed to take a resale credit on their excise tax returns for the amount of the tax previously paid to the provider. Thus, the reseller pays tax on only the difference between the resale price and its cost to purchase the service.

Note: *As noted above, the resale credit is only allowed if the service is resold as a telecommunication service.*