



# Instructions for Form CT-186-E

## Telecommunications Tax Return and Utility Services Tax Return

Tax Law — Article 9, Sections 186-e, 186-a, and 186-c

# CT-186-E-I

### Up-to-date information affecting your 2004 tax return

Visit the *Corporation Tax Up-to-Date Information* page on our Web site at [www.nystax.gov](http://www.nystax.gov) for Tax Law changes or forms corrections that occurred after the forms and instructions were printed.

**Temporary increase in the mandatory first installment of estimated tax** — The Tax Law was amended to provide a temporary increase in the mandatory first installment for taxpayers whose preceding year's tax, exclusive of the MTA surcharge, exceeded \$100,000. For tax years beginning on or after January 1, 2003, but before January 1, 2006, those taxpayers are required to pay a first installment equal to 30% of the preceding year's tax. Additionally, taxpayers who are required to pay their mandatory first installment at the 30% rate and are subject to the MTA surcharge are also required to calculate their estimated tax for the MTA surcharge at 30% of the preceding year's MTA surcharge. The remaining three estimated tax payments are adjusted so that the total payments do not exceed 100% of the estimated tax due. For tax years beginning on or after January 1, 2006, the mandatory first installment reverts to 25% of the preceding year's tax.

The mandatory first installment of estimated tax and estimated MTA surcharge remains at 25% of the preceding year's tax and tax surcharge, respectively, for those taxpayers whose preceding year's tax exceeded \$1,000, but was less than or equal to \$100,000. For more information, see TSB-M-02(5)C.

### Your refund may be applied to a city of New York tax warrant judgment debt

Due to a recent law change, your refund may be reduced by amounts owed for a city of New York tax warrant judgment debt. For additional information concerning these changes, see *Collection of debts from your refund* on page 3.

### General information

The tax rate applicable to section 186-e is 2.5% for the period beginning January 1, 2004. However, the MTA surcharge related to section 186-e must be computed as if the 3.5% rate were still in effect. Providers of telecommunication services compute their tax by completing Schedule A, and, if applicable, Schedule B. Instructions for these sections begin on page 3.

Section 186-a tax rates have been reduced. Utilities that are not subject to the supervision of the Department of Public Service compute their tax on gross operating income by completing Schedule C, Parts I and II. Instructions begin on page 6.

Utilities that are subject to the supervision of the Department of Public Service compute their tax on gross income by completing Parts I, III, IV, and V of Schedule C. Instructions begin on page 6.

Taxpayers subject to tax under section 186-c (MTA surcharge) must complete Part I or Part II of Schedule D, as applicable. Instructions for Schedule D begin on page 8.

### Which form to file

Every provider of telecommunication services must file Form CT-186-E or CT-186-EZ to report the tax due under section 186-e. In addition to your telecommunications activity, if you are a utility supervised by the Department of Public Service or have receipts from other utility services, you must use Form CT-186-E to report the tax imposed by section 186-a.

*Provider of telecommunication services* means any person, corporation, or other entity who furnishes or sells telecommunication services, regardless of whether these activities are the main business of the person, corporation, or other entity, or are only incidental. (Any reference to a utility, regarding the tax imposed by section 186-e or 186-a, is deemed to include a reference to a provider of telecommunication services.)

### Who must file Form CT-186-E

- Local exchange telephone companies.
- Interexchange telephone companies.
- Facilities-based cellular telephone companies.
- Any provider selling telecommunication services to others for resale.
- Any provider of private telecommunication services.
- Any provider that is supervised by the Department of Public Service.
- Any provider of telecommunication services that also sells electricity, steam, gas, water, or refrigeration.

### Who may file Form CT-186-EZ

Generally, any provider of telecommunication services not listed above may file Form CT-186-EZ, *Telecommunications Tax Return — Short Form*. Form CT-186-EZ may be used only by providers selling telecommunication services to customers for ultimate consumption. Examples include:

- Companies exclusively providing paging services (including ancillary and incidental services and equipment) selling exclusively to customers for ultimate consumption.
- Resellers of mobile telephone services (including ancillary and incidental services and equipment) selling exclusively to customers for ultimate consumption.
- Providers of pay telephone services.
- Retail stores that provide telephone services to customers on the premises.
- Retail stores that provide self-operated facsimile or data transmission services to customers on the premises.
- Providers of prepaid phone cards.
- Owners of buildings such as apartment buildings, office buildings, and hotels, who resell or furnish gas, electricity, steam, water, or refrigeration to tenants (see *Special rules for landlords* on page 6 for additional information).
- Hotels and motels providing telecommunication services to guests where the charges for services are separately stated.
- Hospitals selling telecommunication services to persons on the premises where the charges for the services are separately stated.
- Any other provider of telecommunication services selling services exclusively to customers for ultimate consumption.

### Exempt sellers

The following, if selling telecommunication services, are exempt from tax under both sections 186-e and 186-a:

New York State, municipalities, political and civil subdivisions of New York State or a municipality, public districts, not-for-profit corporations, and associations organized and operated exclusively for religious, charitable, or educational purposes.

In addition, the following exemptions apply to section 186-a: any corporation leasing from a city in New York State a water works system to supply water at cost to relieve water pollution in a river within that city, limited dividend housing corporations organized under the Private Housing Finance Law, and motor carriers and brokers.

If your gross income or gross operating income is \$500 or less, you are exempt from tax under section 186-a, but you are still required to complete Schedule C. This \$500 limitation does not apply to the tax imposed under section 186-e (Schedule A), or the related MTA surcharge (Schedule B).

## When to file

You must report on a calendar year basis to New York State, even if you maintain your records and report to the Internal Revenue Service (IRS) using a fiscal accounting period.

This return is due on March 15 following the close of the calendar tax year. If March 15 falls on a Saturday, Sunday, or legal holiday in any year, the return is due on the next business day.

## Where to file

Mail your return to: **NYS CORPORATION TAX  
PROCESSING UNIT  
PO BOX 22038  
ALBANY NY 12201-2038**

**Private delivery services** — If you choose, you may use a private delivery service, instead of the U.S. Postal Service, to file your return and pay tax. However, if, at a later date, you need to establish the date you filed your return or paid your tax, you cannot use the date recorded by a private delivery service **unless** you used a delivery service that has been designated by the U.S. Secretary of the Treasury or the Commissioner of Taxation and Finance. (Currently designated delivery services are listed in Publication 55, Designated Private Delivery Services. See *Need help?* on page 8 of these instructions for information on ordering forms and publications.) If you have used a designated private delivery service and need to establish the date you filed your return, contact that private delivery service for instructions on how to obtain written proof of the date your return was given to the delivery service for delivery. If you use **any** private delivery service, whether it is a designated service or not, address your return to: State Processing Center, 431C Broadway, Albany NY 12204-4836.

## Extension of time for filing tax return

If you cannot meet the filing deadline, you may request an extension of time by filing Form CT-5.9-E, *Request for Three-Month Extension to File Form CT-186-E or Form CT-186-EZ*, on or before the original due date. An extension of time granted by the IRS to file a federal tax return does not extend the due date for filing Form CT-186-E.

## Other surcharges, taxes, and fees that may apply

**Temporary metropolitan transportation business tax (MTA surcharge)** — You must also use this form to compute and report the MTA surcharge imposed by section 186-c on business done in the Metropolitan Commuter Transportation District (MCTD). The MCTD includes the counties of New York, Bronx, Kings, Queens, Richmond, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester.

## Foreign corporations — Maintenance fee and license fee

A corporation organized outside of New York State (a *foreign corporation*) that is authorized to do business in New York State must pay an annual maintenance fee of \$300. Failure to pay the annual maintenance fee or its equivalent in New York State taxes (including the MTA surcharge) will result in annulment of the corporation's authorization to do business in New York State, under Articles 9, 9-A, or 32. Payments of corporation taxes are counted as payments toward the \$300 annual maintenance fee (but not the license fee reported on Form CT-240). If the total of your corporation taxes is greater than \$300, then you have satisfied the requirement to pay the annual maintenance fee. If the total of your corporation taxes is less than \$300, and you are filing Form CT-183 or Form CT-186, pay the \$300 with that form. Indicate on this form that you paid a total corporation tax and maintenance fee of \$300 with Form CT-183 or CT-186, and make no remittance of tax with this return.

Foreign corporations must also file Form CT-240, *Foreign Corporation License Fee Report*.

**Utility services tax** — If you have no receipts from telecommunication services, but have receipts from the furnishing of other utility services, use Form CT-186-P or CT-186-A to report

your taxes under section 186-a. Use Form CT-186-P/M or CT-186-A/M to report your MTA surcharge.

## Specific instructions

### Change of address

If your address has changed, please enter your new address in the appropriate area and mark an **X** in the box next to the address so that we can update your address for this tax type. Do not mark this box for any change of business information other than for your address.

### Changes in business information

You must report any changes in your business name, ID number, mailing address, physical address, telephone number, or owner/officer information on Form DTF-95, *Business Tax Account Update*. If only your address has changed, you may use Form DTF-96, *Report of Address Change for Business Tax Accounts*, to correct your address for other tax types. You can get these forms from our Web site, or by fax or phone. See *Need help?* on page 8 for the Web address and phone number.

**Amended return** — If you are filing an amended return, please mark an **X** in the *Amended return* box on the front page.

**Employer identification number, file number, and other identifying information** — Enter your employer identification number and file number. If you use a paid preparer or accounting firm, make sure they use your complete and accurate identifying information when completing all forms.

**NAICS business code number** — Enter the six-digit NAICS business activity code number from your federal return.

**Whole dollar amounts** — You may elect to show amounts in whole dollars rather than dollars and cents. Round any amount from 50 cents through 99 cents to the next higher dollar. Round any amount less than 50 cents to the next lower dollar.

**Negative amounts** — Show any negative amounts with a minus (-) sign.

**Percentages** — When computing allocation percentages, convert decimals into percentages by moving the decimal point two spaces to the right. Carry percentages to four decimal places. For example:  $5,000/7,500 = 0.6666666 = 66.6667\%$ .

## Line instructions

**Line A** — Make your payment in United States funds. We will accept a foreign check or foreign money order only if payable through a United States bank or if marked **Payable in U.S. funds**.

Before completing lines 1 through 22, you must complete any of the following schedules that apply to you.

Schedule A — New York State excise tax on telecommunication services

Schedule B — MTA surcharge related to telecommunication services

Schedule C — Utility services tax

Schedule D — MTA surcharge on utility services

## Computation of tax

**Lines 2 and 3** — A utility subject to tax under section 186-a that has gross operating income or gross income of less than \$500 is exempt from the payment of the tax under this section. However, you are required to complete Schedule C. Enter "0" on lines 2, 3, 6, and 7, and file this form.

**Line 10a** — If line 1 is over \$1,000 but less than or equal to \$100,000, enter 25% of line 1 in Column A and 25% of line 5 in Column B. If line 1 exceeds \$100,000, enter 30% of line 1 in Column A and 30% of line 5 in Column B.

**Line 10b** — If line 2 or line 3 is over \$1,000 but less than or equal to \$100,000, enter 25% of line 2 or line 3 in Column A and 25% of line 6 or line 7 in Column B. If line 2 or 3 exceeds \$100,000, enter 30% of line 2 or line 3 in Column A and 30% of line 6 or line 7 in Column B.

#### Installments of estimated tax

In addition to the first installment required on lines 9, 10a, or 10b, you may be required to make additional installments of estimated tax. Since every provider of telecommunication services must report its taxes and surcharges under sections 186-e, 186-a, and 186-c on Form CT-186-E, only one Form CT-400, *Estimated Tax for Corporations*, should be used to make any related estimated installment payments.

If the total of your estimated tax related to section 186-e or section 186-a will exceed \$1,000 for the next period, you must file Form CT-400 and make installment payments of estimated tax and MTA surcharge.

You must combine your installment payments on one Form CT-400, but do not combine the estimates for both section 186-e and section 186-a in determining the \$1,000 threshold. If both estimates are greater than \$1,000, estimated installments are required for both. If one estimate is less than or equal to \$1,000, and one is greater than \$1,000, installments are required only for the section estimated to be greater than \$1,000. If neither is greater than \$1,000, no installment payments are required.

You must file a Form CT-400 on or before June 15, September 15, and December 15, and pay the additional installments of estimated tax for the next period.

**Line 15** — If you underpaid your estimated tax for the current tax year, use Form CT-222, *Underpayment of Estimated Tax by a Corporation*, to compute the penalty. Attach Form CT-222, mark an **X** in the box, and enter the amount of penalty on line 15.

#### Interest and penalties for late payment

**Line 16** — If you do not pay the taxes and MTA surcharges on or before the original due date (**without** regard to any extension of time), you must pay interest on the amount of the underpayment from the original due date to the date paid. Exclude from the interest computation the first installment of estimated tax shown on line 9 or 10c.

**Line 17** — Compute additional charges for late filing and late payment on the amount of taxes and MTA surcharges, minus any payment made on or before the due date (**with** regard to any extension of time for filing). Exclude from the penalty computation the first installment of estimated tax shown on line 9 or 10c.

- A. If you do not file a return when due, or if the request for extension is invalid, add to the tax 5% per month up to 25% (section 1085(a)(1)(A)).
- B. If you do not file a return within 60 days of the due date, the addition to tax cannot be less than the smaller of \$100 or 100% of the amount required to be shown as tax (section 1085(a)(1)(B)).
- C. If you do not pay the tax shown on a return, add to the tax ½% per month up to 25% (section 1085(a)(2)).
- D. The total of the additional charges in items A and C may not exceed 5% for any one month, except as provided for in item B above (section 1085(a)).

If you think you are not liable for these additional charges, attach a statement to your return explaining any delay in filing, payment, or both (section 1085).

**Note:** You may compute your penalty and interest by accessing our Web site at [www.nystax.gov](http://www.nystax.gov) and clicking on *Electronic Services*, or you may call 1 800 972-1233, and we will compute the penalty and interest for you.

#### Overpayments and credits

**Line 20** — You may elect to apply all or part of the overpayment on line 19 to the taxes and surcharges to be reported on your Form CT-186-E for the next period. Enter the total amount you want to apply to the next period.

**Line 22** — You may take a refund instead of any sale-for-resale credit or multijurisdictional credit (see instructions for lines 40a and 40b). However, we will not allow or pay any interest on any credit or refund allowed under the sale-for-resale credit.

**Collection of debts from your refund** — We will keep all or part of your refund if you owe a past-due, legally enforceable debt to the Internal Revenue Service (IRS) or to a New York State agency, or if you owe a city of New York tax warrant judgment debt. A *New York State agency* includes any state department, board, bureau, division, commission, committee, public authority, public benefit corporation, council, office, or other entity performing a governmental or proprietary function for the state or a social services district. We will refund any amount over your debt.

If you have any questions about whether you owe a past-due, legally enforceable debt to the IRS or to a state agency, or whether you owe a city of New York tax warrant judgment debt, contact the IRS, the state agency, or the New York City Department of Finance.

For New York State tax liabilities only, call 1 800 835-3554 (from areas outside the U.S. and outside Canada, call (518) 485-6800) or write to: NYS Tax Department, Tax Compliance Division, W A Harriman Campus, Albany NY 12227.

For New York City liabilities only, call (212) 232-3550.

#### Schedule A — New York State excise tax on telecommunication services (Tax Law section 186-e)

##### Local carrier, interexchange carrier, or facilities-based cellular common carrier

Mark an **X** in the applicable box if you are a *local carrier*, *interexchange carrier*, or *facilities-based cellular common carrier*. See the definitions in the instructions for line 33, on page 5. If you mark any of these boxes, you may not claim the resale credit on line 40a or 61.

##### Part I — Computation of gross charges

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.

##### As an excise tax, the charge for each telecommunication service is determined on the basis of each transaction.

Providers of telecommunication services are required to file Form CT-186-E or CT-186-EZ for each calendar year, summarizing the charges accrued and the tax liability to be paid.

*Gross charge* means the amount charged for each telecommunication service provided with no deductions, and is expressed in money, whether paid in cash, credit, or property of any kind or nature. A deduction is allowed for bad debts incurred on charges subjected to tax under section 186-e, when the debt becomes worthless in accordance with consistently applied Generally Accepted Accounting Principles.

*Telecommunication services* means telephony or telegraphy, or telephone or telegraph service of any nature including, but not limited to, any transmission of the following: voice, image, data,

information, or paging, through the use of wire, cable, fiber optics, laser, microwave, radio wave, satellite, 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, directory information, call forwarding, caller identification, call waiting, and supplementary services) and (2) services (of whatever nature) which are incidental to the provision of telecommunication services. The charges from equipment provided in connection with the provision of any telecommunication service (such as beepers, telephones, fax machines, or modems) 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 (information) content of the message transmitted.

**Example:** *The character sequence 1, 2, 3, 4 is sent and the recipient receives only the summary number 10. The charge for this data processing service is separately billed. Because arithmetic processing has substantively changed the information content of the message sent and the data processing service is separately billed, this is not considered a telecommunication service.*

*Telecommunication services* do not include:

- Television or radio programming transmitted to subscribers by cable television service.
- 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; see TSB-M-97(1.1)C).

Examples of telecommunication services charges reported on Form CT-186-E include:

- Local telephone services.
- Toll services.
- Long distance telephone services.
- Carrier access services.
- Private telecommunication services.
- Pay telephone services.
- Paging services.
- Mobile telecommunications services.
- Facsimile and data transmission services.
- Prepaid phone card services.
- All other telecommunication services transmitted by any means whatsoever.

**Line 23** — Enter 100% of your charges from intrastate telecommunication services.

**Line 24** — Enter 100% of your charges from interstate and international services that originate or terminate in New York State and have a service address in New York State.

*Service address* means the location of the equipment from which the telecommunication originated or at which the telecommunication is received by the purchaser from the provider of telecommunication services. Special rules define the *service address* in instances where the telecommunication service is obtained through a credit or payment mechanism (such as a credit, calling card, or third-party billing), and where the service address is not a defined location (such as a mobile telephone, paging system, maritime system, or air-to-ground system). In instances where more than one rule may apply, use the first rule that applies from the list below to determine the service address.

1. If the telecommunication originates or terminates in New York State and is charged to telecommunication equipment that is not associated with the origination or termination of the telecommunication (for example, by the use of a calling card or third-party billing), and the location of the equipment charged is in New York State, the service address will be deemed to be in New York State.
2. If the service is obtained through a credit or payment mechanism such as a bank, travel, credit, or debit card, or if the service is obtained by charging telecommunication equipment that is not associated with the origination or termination of the

telecommunication (for example, by the use of a calling card or third-party billing), and the equipment is not located in the state of origination or termination, then the service address is deemed to be the location of the origination of the telecommunication.

3. If the service address is not a defined location, as in the case of mobile telephones, paging systems, maritime systems, air-to-ground systems and the like, *service address* means the location of the subscriber's primary use of the telecommunication equipment as defined by telephone number, authorization code, or location where bills are sent. However, the location of the mobile telephone switching office or similar facility that receives and transmits the signals of the telecommunication will be deemed the *service address* when the mobile telephone switching office or similar facility is outside the subscriber's assigned service area.

**Note:** Include on line 24 only those charges for mobile telecommunications services that **are not** associated with a New York place of primary use. Enter on line 25 any charges for mobile telecommunications services that **are** associated with a New York place of primary use.

**Line 25** — Enter 100% of your charges for mobile telecommunications services provided to customers whose place of primary use is in New York State.

*Place of primary use* means the street address that represents a customer's primary use of the mobile telecommunications services. That address must be the residential street address or the primary business street address of the mobile telecommunications customer, and must be within the licensed service area of the home service provider.

A home service provider may treat the address it uses for a customer under a service contract that is in effect on July 28, 2002, as that customer's place of primary use for the remaining term of the contract (excluding extensions or renewals) in order to determine the proper taxing jurisdiction for section 186-e taxes.

**Lines 26 through 28** — Enter 100% of your charges from ancillary or incidental services (such as directory information, call forwarding, caller identification, or call waiting) or from equipment provided in connection with telecommunication services (such as beepers and telephones). **Include** miscellaneous charges from commissions and fees earned that are directly related to telecommunication services reported on lines 23 and 24, and 25. **Do not include** receipts from services or equipment that are separately billed and that are not provided directly in connection with telecommunication services.

**Lines 29 through 31 — Private telecommunication services**  
*Private telecommunication service* means any dedicated telecommunication service that entitles the user or users to the exclusive or priority use of a communications channel or group of channels **from** one or more locations **to** one or more locations. In this context, *exclusive* means that the user-subscriber has use of a communications channel to the exclusion of all others who are not authorized to use the channel (but not joint authorized users). *Priority* means that only authorized user-subscribers, as opposed to unauthorized persons, receive preferential use of a communications channel, but not necessarily a preference with respect to each other.

If you are a private telecommunication service, also complete lines 114 through 116.

**Line 29** — Enter 100% of the charges from private telecommunications services that are located entirely within New York State (*intrastate services*).

**Line 30** — When the charge for each channel segment is **separately stated** and the amount fairly reflects traffic originating or terminating in New York State, the charge allocated to New York State is made up as follows:

- 100% of the amount charged at each Channel Termination Point (CTP) within New York State;

- 100% of the amount charged for the use of each channel segment between CTPs within New York State; and
- 50% of the amount charged for the use of any channel segment between a CTP in New York State and a CTP outside New York State.

**Example:** Charges for an interstate private telecommunications channel connecting Buffalo, Albany, and Boston consist of the following: \$10 charged at each CTP, \$100 charged for the use of the channel between Buffalo and Albany, and \$150 between Albany and Boston. The charges fairly reflect New York State origination and termination traffic. The charge allocated to New York State is illustrated below:

	<u>Actual charges</u>	<u>Allocation computation</u>	=	<u>Allocated to New York State</u>
\$10 x 3 CTPs	\$ 30	\$10 x 2 CTPs in NYS	=	\$ 20
Buffalo-Albany	\$100	\$100 x 100%	=	\$100
Albany-Boston	\$150	\$150 x 50%*	=	\$ 75
Charges (unallocated) .....	\$280			
Charges allocated to New York State .....				\$195

\* The separately-stated charge for any channel segment between a CTP in New York State and a CTP outside New York State must be allocated at 50%.

**Line 31** — When the charge for each channel segment is **not separately stated** or the charge does not fairly reflect traffic originating or terminating in New York State, the charge allocated to New York State is made up as follows:

- 100% of the amount charged at each CTP within New York State; and
- an allocated portion of the gross interstate or international channel charge determined by dividing the number of CTPs within New York State by the total number of CTPs everywhere.

**Example:** Charges for an interstate private telecommunications channel are billed as follows: \$50 charged at each CTP and \$400 charged for the use of an entire channel between Buffalo, Albany, New York City, and Washington, DC. The charge allocated to New York State is illustrated below:

	<u>Actual charges</u>	<u>Allocation computation</u>	=	<u>Allocated to New York State</u>
\$50 x 4 CTPs	\$200	\$50 x 3 CTPs in NYS	=	\$150
Entire channel	\$400	\$400 x ¾**	=	\$300
Charges (unallocated) .....	\$600			
Charges allocated to New York State .....				\$450

\*\* Since the charge for each channel segment is not separately stated, the gross channel charge is allocated by the number of CTPs in New York State divided by the number of CTPs everywhere, or ¾.

**Part II — Exclusions and deductions from gross charges**

**Line 33** — Exclude charges that constitute a sale-for-resale of telecommunication services to a local carrier, interexchange carrier, or facilities-based cellular common carrier (see Part III — *Computation of tax due*, below, for the treatment of other sales-for-resale).

*Local carrier* means any provider of telecommunication services for hire to the public, subject to the supervision of the Public Service Commission (PSC), and 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. In other words, any person engaged as common carrier for hire in intrastate, interstate, or foreign telecommunication services is an interexchange carrier.

For the sole purpose of the application of the sale-for-resale exclusion, a reference to an *interexchange carrier* or *local carrier* includes a facilities-based cellular common carrier regardless of whether such carrier is providing local or interexchange service.

You 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.

You **may not exclude** charges from the sales-for-resale to cellular resellers, paging companies, pay telephone companies, hotels, motels, apartment buildings, office buildings, and hospitals. These resellers are not considered local carriers or interexchange carriers for the purposes of the resale exclusion.

For more information see Publication 41, *Treatment of Sales-for-Resale Under Section 186-e of the Tax Law*.

**Line 34** — The following exclusions and deductions are allowed if included in the gross charges reported in Part I:

- Any surcharges collected or any administrative fee retained when you are merely acting as a collection agent for a municipality in connection with the provision of an enhanced emergency telephone system (E911) or for the state wireless communications service surcharge under Article Six of the County Law.
- Receipts from the sale of telecommunication services to air carriers solely for the purpose of air safety and navigation, if you are an organization defined by section 186-e(2)(b)(3) of the Tax Law.
- Taxes imposed by New York State or its municipalities, or the federal government, when you are merely a collection agency for the tax authority (for example, state and local sales tax).
- Receipts from the sale of cable television and radio programming. *Cable television and radio programming* means the transmitting to subscribers of programs broadcast by one or more television or radio stations or any other programs originated by any person by means of wire, cable, microwave, or any other means. (Note: telecommunication services provided to a cable television or radio provider, for the purposes of broadcasting programs to subscribers, are subject to tax under section 186-e.)

**Line 35** — Enter the total deduction for bad debts from all transactions for telecommunication charges subject to tax under section 186-e, when the debt has become worthless in accordance with consistently applied Generally Accepted Accounting Principles.

**Part III — Computation of tax due**

**Line 40a** — If you are a reseller of telecommunication services but not a local carrier, interexchange carrier, or a facilities-based cellular common carrier, you are allowed a credit for tax paid when you resell the services. The credit operates so that the tax on the resale is applied only to the difference between the gross charge imposed on resale and the amount paid to acquire the service resold. Compute the amount of the credit by multiplying your cost to purchase the service by the tax rate.

**Example:** A telephone company sells a telecommunication service to a reseller for \$2 for resale. The reseller, who is not an interexchange carrier or local carrier, resells the service for \$6. The reseller owes a tax on the difference of \$4, or \$.10 (\$4 x 2.5%). When reporting on the resold service, the reseller includes the gross charge of \$6 on line 37, the excise tax of \$.15 (\$6 x 2.5%) on line 39, and the credit of \$.05 (\$2 x 2.5%) on line 40a.

**Line 40b** — To prevent multijurisdictional taxation, you are allowed a credit on any interstate or international telecommunication service upon proof that you paid a tax to another state or country. The amount of the credit is the amount lawfully due and paid to the other state or country, but it may not reduce the tax due to less than zero.

**Line 41** — Enter any other credits claimed, including the credit for long-term care insurance. (See TSB-M-00(5)C.)

## Schedule B — MTA surcharge related to telecommunication services

(Tax Law section 186-c(1)(b))

The MTA surcharge is imposed on charges derived from the MCTD. The rate is 17% of the state tax rate as was in effect on September 30, 1998. Therefore, the MTA rate is 0.595% ( $0.17 \times 0.035 = 0.00595 = 0.595\%$ ).

All of the definitions and instructions in Schedule A apply to the MTA surcharge computed in Schedule B, with any necessary modifications and limitations, including substituting the words *Metropolitan Commuter Transportation District* or *MCTD*, for the words *New York State* where appropriate. Accordingly, the tax applies to gross charges from (1) any intra-MCTD telecommunication services, (2) any inter-MCTD telecommunication services that originate or terminate in the MCTD and are charged to a service address in the MCTD (including intrastate, interstate, and international telecommunication services), (3) private telecommunication services attributable to the MCTD, and (4) mobile telecommunications services provided by a home service provider where the place of primary use is in the MCTD.

## Schedule C — Utility services tax

(Tax Law section 186-a)

**General information** — *Utilities* include every person, subject to the supervision of the New York State Department of Public Service or Department of Transportation, engaged in the business of operating street surface, rapid transit, subway, and elevated railroads, as well as non-operating railroads. *Utilities* also include every person, whether or not subject to the supervision of the State Department of Public Service, who sells gas, electricity, steam, water, or refrigeration, delivered through mains, pipes or wires, or furnishes gas, electric, steam, water, or refrigerator service, by means of mains, pipes, or wires, whether such activities are the main business of such person or are only incidental to them. Every provider of telecommunication services that is subject to the supervision of the New York State Department of Public Service is considered a utility for the purposes of section 186-a.

*Utilities* include persons (including providers of telecommunication services), corporations, companies, associations, joint-stock companies or associations, partnerships or limited liability companies, estates, assignees of rents, any person acting in a fiduciary capacity, or any other entity and persons, their assignees, lessees, trustees, or receivers, appointed by any court.

Motor carriers or brokers are not required to file this schedule.

If your gross income or gross operating income is \$500 or less, you are exempt from tax under section 186-a, but you are still required to complete Schedule C. This limitation does not apply to the tax under section 186-e (Schedule A), or to the related MTA surcharge (Schedule B).

**Gross operating income and gross income** — If you are not subject to the supervision of the Department of Public Service, you must pay tax on your gross operating income. *Gross operating income* is the total of all receipts computed in Schedule C, Part I.

If you are subject to the supervision of the Department of Public Service, you must pay tax on your gross income. *Gross income* is the total of receipts computed in Schedule C, Parts I, III, IV, and V.

*Gross operating income* includes only those receipts from the sale or furnishing of utility services for ultimate consumption or use by the purchaser in New York State.

*Gross income* includes receipts from any sale (conditional or otherwise) or service rendered for ultimate consumption or use by the purchaser within New York State, derived from the utility's principal business and profits from transactions within New York State that are not derived from the utility's principal business.

For a utility that is a provider of telecommunication services, *gross operating income* or *gross income* includes only those receipts that **do not** constitute receipts from the sale of telecommunication services, as such services are defined in section 186-e of the Tax Law.

In determining gross operating income or gross income, include cash, credits, and property of any kind or nature without any deductions for the cost of property sold, the cost of materials used, labor, services, or other costs, interest, or discount paid, or any other expenses, except those deductions provided for on lines 69 and 82 of Schedule C.

Article 2-I of the general city law provides for certain rebates of charges for energy in revitalization areas of New York City. However, nothing contained in Article 2-I shall be construed as reducing the amount of gross receipts subject to tax under section 186-a of the Tax Law.

## Special rules for landlords

**Sales to a landlord** — *Gross operating income* also includes receipts from utility services to a landlord for resale to a tenant for consumption or use by the tenant as incidental to the landlord's renting of premises to the tenant, even though such sales are not for ultimate consumption by the landlord. *Utility services* means the furnishing of gas, electricity, steam, water, or refrigeration, and services directly connected to the furnishing of gas, electricity, steam, water, or refrigeration. Include these receipts with all other utility service receipts on lines 65, 66, and 67.

**Sales by a landlord** — If **all** utility services purchased by a landlord for resale to tenants included the section 186-a tax, then the landlord is not required to complete Schedules C and D.

If **any** utility services were purchased by a landlord for resale to tenants that did not include the section 186-a tax, then complete Schedules C and D as follows:

- Receipts derived by a landlord from the resale of utility services to a tenant are deemed to be equal to the landlord's cost of the same service (including any associated transportation cost). Include these amounts on lines 65, 66, and 67; do not include the markup billed to the tenants.
- If the tax under section 186-a was included on the purchase of a utility service by the landlord, then the landlord may deduct the cost of the same service (including any associated transportation cost) on line 69. If the tax under section 186-a was not included on the purchase by the landlord, then do not deduct this cost on line 69.

## Part I — Gross operating income

**Line 65** — Enter the total receipts from the sale or furnishing of each commodity made for ultimate consumption or use within New York State. See *Special rules for landlords* above.

In determining gross operating income, *receipts* include cash, credits, and property of any kind or nature without any deductions for the cost of property sold, the cost of materials used, labor, services, or other costs, interest, or discount paid, or any other expense, except as stated in the instructions for line 69.

**Line 67** — Enter all other receipts from services rendered for ultimate use within New York State that are directly connected with the sale or furnishing of each commodity.

*Other receipts* includes installation charges, service charges (other than installation) that are connected with the sale or furnishing of the commodity, and rentals within the state that in fact constitute service charges. See *Special rules for landlords* above.

**Line 69** — Deductions allowed from gross operating income are uncollectible accounts and taxes imposed by New York State, its municipalities, or the federal government, for which you are merely a collecting agency for the taxing authority. In addition, if you have passed on your section 186-a tax when you originally purchased these services, you may deduct their cost when you resell them.

**Part II — Tax on gross operating income**

**Line 71** — Compute the tax on gross operating income only if you are not subject to the supervision of the Department of Public Service.

**Line 72** — Enter any tax credits claimed, including the credit for long-term care insurance (see TSB-M-00(5)C).

**Part III — Receipts from interest and dividends allocated to New York State**

**Line 74** — Enter receipts from interest and dividends from sources within New York State, without any deduction for any expense incurred in connection with the receipt. Do not include interest and dividends received from any of the following:

- A corporation, the majority of whose voting stock is owned by you.
- Obligations of the United States, any state, territory, or possession of the United States, or the District of Columbia.
- Obligations of a foreign country.
- Any obligation from any political subdivision or governmental instrumentality of any of those listed above.

Compute receipts from interest and dividends from sources within New York State that are received from corporate and noncorporate entities. Enter in column A the name of the entity that paid the interest or dividend. Enter in column B the type of security (such as stock, bond, or interest-bearing cash account). Enter in column C the amount of interest or dividends received. Enter in column D the issuer's allocation percentage of the corporation that issued the security. Use the issuer's allocation percentage to compute the amount of interest and dividends allocated to New York State.

If the entity that issued the security was not a corporate entity, determine the amount of interest or dividends allocated to New York State by the percentage of capital employed in New York State by the payer of the stock, bonds, interest-bearing cash account, etc., for the year immediately preceding the current tax year. Attach a statement showing the computation of the payer's capital employed in New York State as compared to total capital employed everywhere.

Issuer's allocation percentages for corporate entities can be obtained from tax services publications, from the Tax Department Internet Web site, or by written request (in duplicate) to: NYS Tax Department, Business Tax Information Center, W A Harriman Campus, Albany NY 12227. Call toll free 1 800 972-1233. From areas outside the U.S. and outside Canada, call (518) 485-6800. For forms, publications, and additional information, see *Need help?* on page 8.

**Line 75** — Enter receipts from royalties from sources within New York State without any deductions incurred in connection with the receipt. Royalties include all amounts you received for the use of patents or copyrights, whether or not such patents or copyrights were issued to or are owned by you. A patent or copyright is used in New York State if the activities under the patent or copyright are carried on in New York State.

**Part IV — Computation of profits**

**For lines 77 through 80, the term *profits* means gross selling price minus basis without any further deductions.**

**Line 77** — Enter profits from the sale of securities that are held, managed, or controlled within New York State.

*Securities* include shares of stock in any corporation, certificates of stock or interest in any corporation, securities issued by governmental bodies, and securities issued by corporations of a like nature as stocks and bonds that are sold in the open market or on a recognized exchange, designed as a means of investment, and issued for the purpose of financing corporate enterprises and providing a distribution of rights in, or obligations of, such enterprises.

Include profits from the sale of any tax-exempt securities such as those of the following:

- The United States, any state, territory, or possession of the United States, or the District of Columbia.
- Any foreign country.
- Any political subdivision or instrumentality of any of the above.

Include profits from the sale of securities of an affiliated company and profits from the sale of reacquired stock (treasury stock).

Except for a block transaction, you **may not** apply losses from sales of securities against profits from the sale of securities. A *block transaction* is a single sale where sales of the same security are made in several lots (for example, a utility carries a block of 10,000 shares of the same securities of a corporation in its portfolio and orders its broker to sell the entire block; the fact that the broker executes the order by disposing of the block in several lots does not change the essential nature of the transaction and does not make it more than one sale).

**Line 78** — Enter profits from the sale of real property within New York State in which the utility owns or has an ownership interest.

**Line 79** — Enter profits from the sale of personal property within New York State. Profits include but are not limited to profits from the sale of fixed assets such as fixtures, furniture, machinery, or equipment.

Do not include profits from the sale of merchandise (such as materials and supplies) that is stock in trade of the utility and is included in merchandise inventory.

**Line 80** — Enter profits from any transaction within New York State that was not performed in the conduct of your principal business. Do not include profits from sales for resale or profits from rentals. *Profits* include but are not limited to profits from:

- The sale of merchandise (such as materials and supplies) that is not your stock in trade and is not included in merchandise inventory.
- Labor not performed in the conduct of your principal business.
- Transportation or transmission agreements when you use your mains, pipes, or wires within New York State to transport or transmit a commodity owned by another utility.

**Line 82** — Deductions allowed from profits reported on line 81 include:

- Brokerage fees, legal fees, advertising fees, and other selling expenses incurred due to the sale of securities, real property, and personal property.
- Cash discounts taken by the customer.
- Uncollectible accounts.
- Taxes imposed by New York State or its municipalities or the federal government, when you are merely a collecting agency for the taxing authority (such as state and local sales tax or federal excise taxes).

Enter all deductions listed above that are included in profits on line 81. Attach a statement listing all deductions.

**Part V — Computation of tax on gross income**

**Line 85** — Enter all exclusions listed below that are included as receipts on line 66. Attach a statement listing all deductions. See *Special rules for landlords* on page 6.

- Sales of transportation, transmission, or distribution of gas or electricity by means of conduits, mains, pipes, wires, lines, or the like to a:
  - Utility (excluding a public authority) supervised by New York State or another jurisdiction, when an element of such supervision includes rate regulation.
  - Municipality that owns and operates facilities that are used to generate or distribute electricity or distribute gas, and

that distributes and sells this electricity or gas solely at retail, solely within its jurisdiction.

- Public authority of New York State when that public authority is primarily engaged in the generation and transmission or distribution of electricity or gas and at least 95% of the assets are so devoted.
- Sales of transportation, transmission, or distribution of electricity to a municipality when the electricity being transported has been purchased by that municipality, and has been generated solely by and purchased solely from New York State or a public authority of New York State (New York State Power Authority), and when the municipality sells solely at retail, solely within its jurisdiction, the electricity being transported, transmitted, or distributed.
- Sales of transportation, transmission, or distribution of gas or electricity to not-for-profit corporations and associations organized and operated exclusively for religious, charitable, or educational purposes, described in section 1116(a)(4) of the Tax Law, when that organization resells the transportation, transmission, or distribution as part of a bundled gas or electric service as landlord to its tenants in buildings owned by that organization.

In addition, for calendar tax years beginning on or after January 1, 2004, 75% of your receipts received from nonresidential customers representing the noncommodity charges for gas or electric service (receipts from the transportation, transmission, or distribution of gas or electricity) must be excluded from gross income.

The term *nonresidential customers* means those customers whose use of gas, electricity, or gas or electric service **does not** qualify for the reduced rate of sales and compensating use tax on residential gas, electricity, or gas or electric service, under section 1105-A of the Tax Law.

**Line 92** – Enter the amount of the long-term care insurance credit that you are claiming. Attach Form CT-249, *Claim for Long-Term Care Insurance*, to your return (see TSB-M-00(5)C).

**Line 94** – Enter the amount of the Power for Jobs credit you are claiming. A Power for Jobs credit is available to qualified electric corporations that are local distribution companies during calendar years 1997 through 2005. To claim this credit, attach a certificate from the Department of Public Service verifying the correctness of the credit claimed.

### Schedule D — MTA surcharge on utility services (Tax Law section 186-c(1)(a))

If you are a utility not supervised by the Department of Public Service and did business in the MCTD during the tax year, complete Schedule D, Part I.

If you are a utility supervised by the Department of Public Service and did business in the MCTD during the tax year, complete Schedule D, Part II.

The MCTD includes the counties of New York, Bronx, Kings, Queens, Richmond, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester.

**Do not** complete Schedule D if your section 186-a tax computed on Schedule C is zero.

### Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

### Need help?



**Internet access:** [www.nystax.gov](http://www.nystax.gov)  
(for information, forms, and publications)



**Fax-on-demand forms:** 1 800 748-3676



**Telephone assistance** is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.

To order forms and publications: 1 800 462-8100  
Business Tax Information Center: 1 800 972-1233  
From areas outside the U.S. and outside Canada: (518) 485-6800

**Hearing and speech impaired** (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110 (8:00 A.M. to 5:00 P.M. eastern time).



**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.