

Resale Certificates for Certain Telecommunications Purchases

Chapter 297 of the Laws of 2008 amended section 186-e of the Tax Law, which imposes the excise tax on telecommunication services. Providers of telecommunication services will now be allowed a sale-for-resale exclusion from the excise tax for any sale of telecommunication services made to a person who resells telecommunication services as such and who presents the provider with a valid resale certificate. Previously, providers were allowed an exclusion from the tax only when the sale was to interexchange carriers or local carriers, which include facilities-based cellular common carriers. The exclusion applies to services sold on or after January 1, 2009.

Except as provided below, a reseller of telecommunication services seeking to obtain telecommunication services exempt from the section 186-e excise tax must provide a properly completed copy of Form CT-120, *Resale Certificate for Telecommunication Purchases*, to its provider of telecommunication services for services it purchases on or after January 1, 2009. Form CT-120 should be presented to the provider within 90 days after the provision of the service.

If a provider accepts the resale certificate, the provider is protected from liability from the tax under section 186-e if the resale certificate is valid. A resale certificate is considered valid if it is:

- accepted in good faith,
- received by the provider within 90 days after the provision of the service, and
- properly completed with all required information.

A resale certificate is accepted in good faith when the provider has no knowledge that the resale certificate is false or fraudulently given and reasonable ordinary due care is exercised in accepting the resale certificate.

If the resale certificate is not received within 90 days after the provision of the service, the provider may, within 60 days after a request from the Tax Department, either prove that the telecommunication services were sold for resale as telecommunication services or obtain a valid resale certificate from the reseller. However, a resale certificate obtained within this 60-day period is not conclusive proof that the telecommunication services covered by the certificate were sold for resale as telecommunication services. The resale certificate will be administered in a manner consistent with the sales tax resale certificate provisions under Tax Law section 1132(c).

A resale certificate is not properly completed if it does not include the reseller's Certificate of Authority number (issued in accordance with Tax Law section 1134) or if the reseller's Certificate of Authority has expired or is invalid because it has been suspended or

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revoked. A timely-received resale certificate that is deficient in some material manner may be considered valid if the deficiency is corrected by the reseller.

Sales of telecommunication services not properly supported by valid resale certificates will be subject to excise tax. The burden of proof that the tax was not required to be collected is on the provider.

The provider must keep resale certificates for at least three years after the due date of the return to which they relate or the date the return was filed, if later. The provider must maintain a method of associating invoices (or other source documents) for exempt sales to resellers with the resale certificate on file for that reseller.

The relief provided by this legislation does not apply to a provider of telecommunication services that fraudulently fails to pay tax or solicits a reseller or resellers to submit one or more unlawful resale certificate.

A reseller who issues a false or fraudulent certificate of resale with the intent to evade tax is, in addition to any other penalty imposed, subject to a penalty of 100% of the tax that would have been due had there not been a misuse of that certificate, plus a penalty of \$50 for each false or fraudulent certificate.

If the reseller does not resell as telecommunication services the telecommunication services purchased with a resale certificate, the reseller must report and pay the unpaid tax on Form CT-186-E, *Telecommunications Tax Return and Utility Services Tax Return*, or Form CT-186-EZ, *Telecommunication Tax Return - Short Form*.

A reseller that purchases telecommunication services on which the sale-for-resale exclusion was not allowed may, instead, be allowed the resale credit under Tax Law section 186-e.4(a)(1) for telecommunication services resold as such.

To allow additional time for compliance, for sales prior to June 1, 2009, providers may continue to rely on a Certificate of Public Convenience and Necessity provided by a reseller prior to January 1, 2009, as evidence that a particular reseller is eligible for the resale exclusion.

For more information and to obtain a copy of Form CT-120, visit our Web site at www.nystax.gov.

(Tax Law sections 186-e.2(b)(1) and 186-e.4(a)(1))

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.