

**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****General Information****Changes Effective in 1998**

The Tax Law was amended to reduce the tax rate applicable to sections 186-e and 186-a. The rate change is effective October 1, 1998. For the period January 1, 1998, through September 30, 1998, the tax rate is 3.5%. For the period October 1, 1998, through December 31, 1998, the tax rate is 3.25%. However, the MTA surcharge related to both sections 186-e and 186-a must be computed as if the 3.5% tax rate is in effect for the entire year.

Form CT-186-E was revised to reflect the rate change. In addition, the amount of information required to be reported was reduced and the instructions simplified. Further, a new form, CT-186-EZ, was created for smaller providers of telecommunication services. See below to determine which form to file.

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 in regard to 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 apartment buildings, office buildings, hotels, etc., 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 or the related MTA surcharge computed on Schedules A and B.

When and Where to File

You must report on a calendar year basis to New York State, even if you maintain your records and report to the 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.

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

Private Delivery Services

The date recorded or marked by certain private delivery services, as designated by the U.S. Secretary of the Treasury or the Commissioner of Taxation and Finance, will be treated as a postmark, and that date will be considered to be the date of delivery in determining whether your return was filed on time. If you use any private delivery service, address your return to: State Processing Center, 431C Broadway, Menands, NY 12204. 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.)

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 surcharges 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.

If you provided telecommunication services in the MCTD during the tax year, you must answer *Yes* to the first question above line A and complete Schedule B, *MTA Surcharge Related to Telecommunication Services*. If you did not provide telecommunication services in the MCTD during the tax year, you must disclaim liability for the MTA surcharge by answering *No*.

If you are a utility supervised by the Department of Public Service and did business in the MCTD during the tax year, or if you provided utility services in the MCTD during the tax year, you must answer *Yes* to the second question above line A and complete Schedule D, *MTA Surcharge on Utility Services*. If you did not do business or provide utility services in the MCTD during the tax year, you must disclaim liability for the MTA surcharge by answering *No*.

Tax on Importation of Gas Services — Section 189 of Article 9 imposes a tax on gas importers who import, or cause to be imported, gas services into New York State for their own use. For additional information see TSB-M-91(5)C.

Use Form CT-189, *Tax on Importation of Gas Services*, to remit the tax under section 189 of the Tax Law.

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) under Articles 9, 9-A, or 32 will result in annulment of the authorization to do business in New York State. Payments of such 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 such taxes is greater than \$300, then you have satisfied the requirement to pay the annual maintenance fee. If the total of such taxes paid is less than \$300, and you are filing Form CT-183, enter \$300 on line 6 of Form CT-183 and make your payment with that form; or, if you are filing Form CT-186, enter \$300 on line 7 of Form CT-186 and make a payment with that form. In addition, on any other Article 9 returns that you are required to file, indicate that a total tax and maintenance fee of \$300 was paid with Form CT-183 or CT-186, and make no remittance of tax with the other returns. Article 9 returns that may apply to you include CT-183, CT-183-M, CT-184, CT-184-M, CT-186-E, CT-186-EZ, and CT-189.

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.

How to Complete the Name and Address Section

Employer Identification Number, File Number and Other Identifying Information — To ensure that your corporation tax forms are processed as quickly and efficiently as possible, it is important that we have the necessary identifying information from your preprinted label. Keep a record of the label information for

future use. Please be certain to include your employer identification number and file number on each corporation tax form mailed. This will facilitate processing of your return to the correct account. Without this information, we may not be able to process your return.

If you use a paid preparer or accounting firm, make sure they use the mailing label or label information when completing all forms prepared for you.

Business Activity Code Number

Enter the business activity code number from your federal return. Please check the appropriate box for the type of code you are using. Check the box marked *NAICS* if you use the North American Industry Classification System. If you have entered a Principal Industrial Activity (PIA) or Standard Industrial Classification (SIC) code, check the box marked *Other*.

Amended Return — If you are filing an amended return, please write **Amended Return** across the top of the front page.

Specific Instructions

Which Schedules Apply to You

Before completing lines 1 through 20, you must complete Schedules A, B, C, or D 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

Whole Dollar Amounts - You may elect to show amounts in whole dollars rather than dollars and cents. Round an amount from 50 cents through 99 cents to the next higher dollar, and round any amount less than 50 cents to the next lower dollar.

Percentages - When computing allocation percentages, convert decimals into percentages by moving the decimal point two spaces to the right. Percentages should be carried out to four decimal places. For example: $5,000/7,500 = .666666 = 66.6667\%$.

Negative amounts, if any, should be shown in parentheses.

Computation of Tax

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

Installments of Estimated Tax

In addition to the first installment required on lines 7, 8a, or 8b, you may be required to make additional installments of estimated tax. Since every provider of telecommunication services will 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 13 — If you underpaid your estimated tax for 1998, use Form CT-222, *Underpayment of Estimated Tax by a Corporation*, to compute the penalty. Attach Form CT-222, check the box, and enter the amount of penalty on line 13. If no penalty is due, enter "0" on line 13.

Penalties and Interest for Late Payment

Line 14 — 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 7 or 8c.

Line 15 — Additional charges for late filing and late payment are computed on the amount of taxes and MTA surcharges, less any payment made on or before the due date, determined **with** regard to any extension of time for filing. Exclude from the penalty computation the first installment of estimated tax shown on line 7 or 8c.

- 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 $\frac{1}{2}\%$ 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 and/or payment (section 1085).

Note: You may have the interest (line 14) and penalty (line 15) computed for you by calling the Business Tax Information Center at the number listed under *Need Help?* on page 8.

Overpayments and Credits

Line 18 — You may elect to apply all or part of the overpayment on line 17 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 20 — In lieu of any sale-for-resale credit or multijurisdictional credit (see instructions for lines 38 and 39), a taxpayer may elect to take a refund. However, except as provided by section 1088(c) of the Tax Law, no interest will be allowed or paid 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 or a New York State agency. This 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. Any amount over your debt will be refunded.

If you have any questions about whether you owe a past-due, legally enforceable debt to the Internal Revenue Service or a state agency, contact the IRS or that particular state agency.

For New York State tax liabilities **only** call 1 800 835-3554 (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.

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

Check box a, b, or c if you are a *local carrier, interexchange carrier, or facilities-based cellular common carrier*. See the definitions in the instructions for line 30. If you check any of these boxes, you may not claim the resale credit on line 38 or 58.

Columns A and B — Use Column A for transactions occurring from January 1, 1998, through September 30, 1998, and use Column B for transactions occurring from October 1, 1998, through December 31, 1998.

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); and (3) private telecommunication services attributable to 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 with respect to 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-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, 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 (for example, 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 (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, it is not considered a telecommunication service.

Telecommunication services do not include:

- television or radio programming transmitted to subscribers by cable television service, or
- Internet access services (including communication/navigation software, e-mail privileges, news headlines, and certain website services furnished as part of a combined Internet access charge).

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 telephone services
- facsimile and data transmission services
- prepaid phone card services
- all other telecommunication services transmitted by any means whatsoever

Line 21 — Enter 100% of your charges from intrastate telecommunication services.

Line 22 — 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, air-to-ground system, etc.). The rules are applied in the following order, such that the first rule to apply should be used to determine the service address in instances where more than one rule may apply.

- (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* shall mean 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.

Lines 23 through 25 — Enter 100% of your charges from ancillary or incidental services (for example, directory information, call forwarding, caller-identification, call-waiting, etc.) or from equipment provided in connection with telecommunication services (such as beepers, telephones, etc.). **Include** miscellaneous charges from commissions and fees earned that are directly related to telecommunication services reported on lines 21 and 22. **Do not include** receipts from services or equipment that are separately billed and that are not provided directly in connection with telecommunication services.

Lines 26 through 28 — 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.

Line 26 — Enter 100% of the charges from private telecommunication services that are located entirely within New York State (*intrastate services*).

Line 27 — 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:*

	Actual charges	Allocation computation	Allocated to New York State
\$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 28 — 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:

	Actual charges	Allocation computation		Allocated to New York State
\$50 x 4 CTPs	\$200	\$50 x 3 CTPs in NYS	=	\$150
Entire channel	\$400	\$400 x 3/4*	=	\$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 3/4.

Part II — Exclusions and deductions from gross charges

Line 30 — Exclude charges that constitute a sale-for-resale of telecommunication services to an interexchange carrier, local carrier, or facilities-based cellular common carrier (see the *Credits* section under Part III — *Computation of tax due*, below, for the treatment of other sales-for-resale).

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.

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.

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 as such.

To determine if a particular purchaser (reseller) qualifies as an interexchange carrier, local carrier, or facilities-based cellular common carrier, you may accept a *Certificate of Public Convenience and Necessity* issued by the PSC as evidence that a carrier is eligible for the resale exclusion.

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

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

Line 31 — 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 merely acting as a collection agent for a municipality in connection with the provision of an enhanced emergency telephone system (E911) pursuant to 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, when such telecommunication services are provided by an organization defined by section 186-e(b)(3) of the Tax Law.
- taxes imposed by New York State or its municipalities, or the federal government, when the provider is 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 32 — Enter the total deduction for bad debts from all transactions (allowed with respect to telecommunication charges subjected 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 38 — When a reseller of telecommunication services is not an interexchange carrier or local carrier (or a facilities-based cellular common carrier), a credit will be allowed to the reseller for tax paid when the services are actually resold. The credit is intended to operate so that the tax on the resale will be applied only to the difference between the gross charge imposed on resale and the amount paid to acquire the service resold. Mathematically, the amount of the credit may be computed by multiplying the reseller's cost to purchase the service by the tax rate.

Example: On January 9, 1998, 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 \$5. The reseller owes a tax on the difference of \$3, or \$.105 ($\$3 \times 3.5\%$). When reporting on the resold service, the reseller will show a gross charge of \$5, an excise tax computed of \$.175 ($\$5 \times 3.5\%$), and a credit of \$.07 ($\$2 \times 3.5\%$).

Line 39 — In order to prevent multijurisdictional taxation, a credit is allowed on any interstate or international telecommunication service upon proof that a telecommunication services provider paid a like tax to another state or country. The amount of the credit will be the amount lawfully due and paid to the other state or country, but it may not reduce the tax due to less than zero.

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, at a rate of 17% of the state tax rate. Currently, the MTA rate is 0.595% ($.17 \times .035 = .00595 = .595\%$).

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* 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), and (3) private telecommunication services attributable to 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; regardless of 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 or the related MTA surcharge computed on Schedules A and B.)

Gross Income and Gross Operating Income — 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 all receipts computed in Schedule C, Parts I, II, and III.

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 receipts computed in Schedule C, Part I, only.

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 that are 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. *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.

For a utility that is a provider of telecommunication services, *gross income* or *gross operating 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 income or gross operating 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 71 and 81 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 pursuant to 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 62 through 70.

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 62 through 70; 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 71. If the tax under section 186-a was not included on the purchase by the landlord, then do not deduct this cost on line 71.

Line Instructions

Column A and B — Use Column A for transactions occurring from January 1, 1998, through September 30, 1998, and use Column B for transactions occurring from October 1, 1998, through December 31, 1998.

Part I - Computation of receipts from utility services

Lines 62 through 65 — Enter for each type of commodity sold or furnished for ultimate consumption or use within New York State the receipts from such sales without any deductions. See **Special Rules for Landlords** above.

Line 67 — Enter all receipts (without any deductions) from services rendered within New York State that are directly connected with the sale or furnishing of gas, electricity, steam, water and refrigeration for ultimate consumption or use within New York State.

Receipts include but are not limited to the following:

- receipts from installation charges;
- receipts from service charges (other than installation) that are performed in the conduct of the utility's principal business **or in connection with the furnishing of utility services**; and
- receipts from rentals within New York State that, in fact, constitute service charges (such as receipts from the rental of equipment necessary to enable the customer to use the commodity). See **Special Rules for Landlords** above.

Line 68 — Enter receipts (without any deduction) from sales of merchandise (conditional or otherwise) within New York State that are directly connected with the sale of gas, electricity, water, and refrigeration for ultimate consumption or use within New York State. Sales of merchandise include materials and supplies that constitute **stock in trade** of the utility and are included in merchandise inventory. Receipts include but are not limited to the following:

- receipts from the sale of merchandise to the utility's customers;
- receipts from the sale of merchandise to other utilities; and
- receipts from the sale of merchandise to employees (except work supplies, such as clothing, shoes, helmets, etc.).

Do not include receipts from the sale of merchandise that do not constitute stock in trade and are not included in merchandise inventory (for example, items of fixed assets such as fixtures, furniture, or machines).

Line 69 — Enter any other receipts (without any deduction) from sales made or services rendered within New York State that are derived from the conduct of the utility's principal business or furnishing of utility services. Receipts include but are not limited to the following:

- receipts from the sale of residuals and by-products that are consumed or used in New York State; and
- receipts from transportation or transmission agreements, such as contract carriage and lease operating agreements, where the utility uses its mains, pipes, or wires within New York State to transport or transmit a commodity owned by the purchaser that is not a utility. See **Special Rules for Landlords** above.

Line 71 — Deductions allowed from receipts on line 70 are the following:

- receipts from sales for resale,
- cash discounts taken by the customer;
- uncollectible accounts; and
- taxes imposed by New York State or its municipalities or the federal government, when the taxpayer is merely a collection agency for the taxing authority (such as state and local sales tax and federal excise taxes).

If you are reporting gross operating income, you may also deduct the cost of utility services purchased and resold when the tax under section 186-a was paid by the utility providing the service to you. To claim this deduction, attach a schedule identifying the commodity, the utility it was purchased from, the quantity purchased, the purchase price, the quantity consumed that was not sold, the quantity sold, and the receipts from the quantity sold. See **Special Rules for Landlords** above.

Enter all deductions listed above that are included as receipts on line 70. Attach a statement listing all deductions.

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

Complete Part II only if you are subject to the supervision of the Department of Public Service.

Line 73 — 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 the taxing utility;
- obligations of the United States, any state, territory, or possession of the United States, or the District of Columbia;
- obligations of a foreign country; and
- any obligation from any political subdivision or governmental instrumentality of any of those listed above.

For each period shown in Columns A and B, compute receipts from interest and dividends from sources within New York State that are received from corporate and noncorporate entities. Enter in column 1 the name of the entity that paid the interest or dividend. Enter in column 2 the type of security (such as stock, bond, or interest-bearing cash account). Enter in column 3 the amount of interest or dividends received. Enter in column 4 the issuer's allocation percentage of the corporation that issued the security (always enter the issuer's allocation percentage from the year immediately preceding the current tax year). The issuer's allocation percentage is used to compute the amount of interest and dividends allocated to New York State.

In the event the entity that issued the security was not a corporate entity, the amount of interest or dividends allocated to New York State is determined 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 Website, or by written request (in duplicate) to: Business Tax Information Center, NYS Tax Department, 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 74 — Enter receipts from royalties from sources within New York State without any deductions incurred in connection with the receipt. Royalties include all amounts received by the utility for the use of patents or copyrights, whether or not such patents or copyrights were issued to or are owned by the utility. A patent or copyright is used in New York State to the extent that the activities under the patent or copyright are carried on in New York State.

Part III — Computation of profits

Complete Part III only if you are subject to the supervision of the Department of Public Service.

For lines 76 through 79, the term *profits* means gross selling price minus basis without any further deductions.

Line 76 — 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 which 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; and
- any political subdivision or instrumentality of any of the foregoing.

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, losses from sales of securities **may not** be applied 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 77 — Enter profits from the sale of real property within New York State in which the utility owns or has an ownership interest.

Line 78 — Enter profits from the sale of personal property within New York State that does not constitute stock in trade of the utility and is not included in merchandise inventory. 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 constitute stock in trade of the utility and are included in merchandise inventory.

Line 79 — Enter profits from any transaction within New York State that is not performed in the conduct of the utility's principal business. Do not include profits from sales for resale or profits from rentals. Profits include but are not limited to the following:

- profits from the sale of merchandise (such as materials and supplies) that do not constitute stock in trade of the utility and are not included in merchandise inventory;
- profits from labor not performed in the conduct of the utility's principal business; and
- profits from transportation or transmission agreements when the utility uses its mains, pipes, or wires within New York State to transport or transmit a commodity owned by another utility.

Line 81 — Deductions allowed from profits reported on line 80 are the following:

- 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; and
- taxes imposed by New York State or its municipalities or the federal government, when the taxpayer is merely a collecting agency for the taxing authority (such as state and local sales tax, and federal excise taxes).

Enter all deductions listed above that are included in profits on line 80. Attach a statement listing all deductions.

Part IV — Computation of tax on utility services

Line 83 — If you are subject to the supervision of the Public Service Commission, enter the total of Parts I, II, and III (lines 72, 75, and 82) to determine your gross income. If you are not subject to the supervision of the Public Service Commission, then enter the receipts computed in Part I only (line 72), to report your gross operating income.

Schedule D — MTA Surcharge on Utility Services (Tax Law section 186-c(1)(a))

If you are a utility supervised by the Department of Public Service and did business in the MCTD during the tax year, or if you provided utility services in the MCTD during the tax year, you must complete Schedule D, *MTA Surcharge on Utility Services*.

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 "0."

Line 87 — Enter your total gross income or gross operating income derived from sources located in the MCTD for the entire calendar year.

Line 88 — The MTA surcharge must be computed as if the 3.5% tax rate was in effect for the entire year. Accordingly, the MTA surcharge rate = .595% ($3.5\% \times 17\% = .595\% = .00595$).

Supplementary information pertaining to private telecommunication services

Lines 96, 97, and 98 — Complete lines 96, 97, and 98 only if you are a provider of private telecommunication services and completed lines 26 through 28. Enter the total number of channel termination points everywhere, in New York State, and in the MCTD.

Need Help?

Telephone Assistance is available from 8:30 a.m. to 4:25 p.m. (eastern time), Monday through Friday. **For business tax information and forms**, call the Business Tax Information Center at 1 800 972-1233. **For general information**, call toll free 1 800 225-5829. **To order forms and publications**, call toll free 1 800 462-8100. **From areas outside the U.S. and outside Canada**, call (518) 485-6800.

Fax-on-Demand Forms Ordering System - Most forms are available by fax 24 hours a day, 7 days a week. Call toll free from the U.S. and Canada 1 800 748-3676. You must use a Touch Tone phone to order by fax. A fax code is used to identify each form.

Internet Access - <http://www.tax.state.ny.us>
Access our website for forms, publications, and information.

Hotline for the Hearing and Speech Impaired - If you have access to a telecommunications device for the deaf (TDD), you can get answers to your New York State tax questions by calling toll free from the U.S. and Canada 1 800 634-2110. Assistance is available from 8:30 a.m. to 4:15 p.m. (eastern time), Monday through Friday. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.

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 the information numbers listed above.

Mailing Address - If you need to write, address your letter to: NYS Tax Department, Taxpayer Assistance Bureau, W A Harriman Campus, Albany NY 12227.

Privacy Notification

The right of the Commissioner of Taxation and Finance and the Department of Taxation and Finance to collect and maintain personal information, including mandatory disclosure of social security numbers in the manner required by tax regulations, instructions, and forms, is found in Articles 8, 9, 9-A, 13, 19, 27, 32, 33, and 33-A of the Tax Law; and 42 USC 405(c)(2)(C)(i).

The Tax Department will use this information primarily to determine and administer corporate tax liabilities under the Tax Law, for certain tax refund offsets, and for any other purpose authorized by law.

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

This information will be maintained by the Director of the Registration and Data Services Bureau, NYS Tax Department, Building 8 Room 924, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the U.S. and outside Canada, call (518) 485-6800.