

STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

SUBSTANCE OF THE EMERGENCY RULE

This rule amends the Cigarette Tax and the Cigarette Marketing Standards regulations, as published in Title 20 NYCRR, in response to legislative changes enacted on April 23, 2008, by Part RR-1 of Chapter 57 of the Laws of 2008. This rule also makes technical updates to the Sales and Use Tax regulations, as published in Title 20 NYCRR.

Part RR-1 amended Article 20 of the Tax Law to increase the excise tax on cigarettes from \$1.50 for each 20 cigarettes, or fraction thereof, to \$2.75, effective June 3, 2008. It also imposes a tax on the inventory of cigarettes possessed for sale in New York State and any unaffixed stamps as of the close of business June 2, 2008, based on the increased rate of excise tax. The purpose of the rule is to make necessary regulatory changes related to implementation of these provisions and set the rate of commissions allowable to cigarette agents for affixing cigarette stamps relating to the new rate of tax. The amendments also update the calculation of the basic cost of cigarettes and make other technical updates, including amendments to the sales and use tax regulations regarding receipts on which sales tax is computed to eliminate reference to a former rate of cigarette tax and to update the provision regarding inclusion of the New York City cigarette tax.

Sections 1, 2, 3 and 5 of the rule make technical and conforming amendments to sections 70.1, 74.1, 74.2 and 74.5, respectively, of the Cigarette Tax regulations to reflect the statutory increase in the excise tax on cigarettes.

Section 4 of the rule amends section 74.3 of the regulations, which provides the schedule by which commissions (pursuant to section 472 of the Tax Law) are allowed to licensed cigarette agents as compensation for affixing stamps to packages of cigarettes. The rule amends current language to reflect the change in the

amount of tax payment represented by the tax stamps, which is the basis upon which the commissions are computed. The current percentage rates and related threshold used to compute commissions are not amended by this rule, resulting in an increase in the commissions on a per stamp basis.

Section 6 of the rule renumbers section 79.3 of the regulations to be section 79.4 and adds a new section 79.3 to reflect the additional amount of tax on the inventory of cigarettes possessed for sale in New York State and any unaffixed stamps as of the close of business June 2, 2008, based on the increased rate of excise tax. For purposes of taking the required June 2, 2008, close of business inventories, the rule allows dealers that operate vending machines to estimate the contents of such machines at one-half of their normal fill capacities. This provision results from the fact that it may not be possible to take an actual physical inventory of every machine a dealer operates in the State on a given day. The rule also outlines the procedures by which a tax on existing inventories will be reported and paid. Pursuant to the statutory provisions, the additional amount of tax on existing inventories is allowed to be paid in two installments and the rule provides that a taxpayer's first installment must be at least 25% of the additional amount of tax due, but cannot be less than \$500. The first installment is due no later than August 20, 2008, and the remaining balance of tax is due no later than December 22, 2008.

Section 7 of the rule amends section 80.2 of the regulations to reflect the new rate of tax in the computation of the basic cost of cigarettes for purposes of the Cigarette Marketing Standards Act

Sections 8, 9, 11, and 13 of the rule make technical amendments to sections 82.2, 82.3, 82.4 and 82.5 of the Cigarette Marketing Standards regulations to reflect the change to the basic cost of cigarettes made by section 7 of the rule. These changes are carried through the illustrations outlining the minimum prices that cigarettes may be sold at various points in the distribution chain.

Sections 10 and 12 provide for technical updates.

Sections 14 through 17 amend section 526.5 of the Sales and Use Tax Regulations to eliminate a reference to a former rate of cigarette tax and provide for technical updates regarding the inclusion/exclusion of certain excise taxes in receipts on which sales tax is computed.

Finally, section 18 of the rule provides that the rule shall take effect on June 3, 2008; however, section 6 of the rule concerning the tax due on inventory shall take effect on the date the Notice of Emergency Adoption and Proposal is filed with the Department of State.