

REGULATORY IMPACT STATEMENT

DEPARTMENT OF TAXATION AND FINANCE

1. Statutory authority: Tax Law, section 171, subdivision First; section 475 (not subdivided); Chapter 93 of the Laws of 2002, and New York City Local Law 10, enacted June 30, 2002

2. Legislative objectives: Sections 171(First) and 475 of the Tax Law provide for reasonable rules and regulations relating to the implementation and administration of the Cigarette Tax imposed by Article 20 and the Cigarette Marketing Standards contained in Article 20-A of such law. Chapter 93 of the Laws of 2002 was enacted on June 25, 2002. Among its provisions, Chapter 93 authorized New York City to increase the New York City excise tax on cigarettes. New York City Local Law 10, enacted on June 30, 2002, increased the New York City excise tax on cigarettes effective July 2, 2002.

3. Needs and benefits: Chapter 93 authorized New York City to increase the New York City excise tax on cigarettes from 4 cents for each 10 cigarettes or fraction thereof to 75 cents for each 10 cigarettes or fraction thereof (*i.e.*, from \$.08 per pack to \$1.50 per pack of 20 cigarettes), effective July 2, 2002. The purpose of these amendments is to make necessary regulatory changes, to reflect the increased rate of tax, to eliminate reference to a separate New York City only stamp that no longer exists, and to update the calculation of the basic cost of cigarettes to more realistically reflect such cost based upon the price of cigarettes in the current market. In addition, the regulation ensures that commissions paid by New York State to licensed cigarette agents are preserved notwithstanding the New York City tax rate increase.

Due to the statutory effective date of these changes, the rule was previously adopted as an emergency measure on June 28, 2002. The June 28, 2002 emergency measure is scheduled to expire on September 25, 2002. The proposal to make the rule permanent was published in the State Register on September 11, 2002. However, the permanent rule will not be effective until the Notice of Adoption is published in the State Register. The earliest

date the Notice of Adoption may be published is November 13, 2002. Accordingly, this emergency readoption is required to ensure that the New York State commission rates remain effective and licensed cigarette agents receive a commission from New York State for their services.

4. Costs: It is estimated that the implementation of, and continued compliance with, the rule will impose no fiscal or non-fiscal costs upon regulated parties. Any costs incurred by regulated parties are the result of the enactment of Chapter 93 of the Laws of 2002. Chapter 93 authorized the increased rate of New York City excise tax on cigarettes.

It is estimated that there will be no fiscal impact to this Department for the implementation and continued administration of the rule. It is also estimated that the rule will have no fiscal impact on local governments throughout the state.

Commissions paid by New York State to licensed cigarette agents are estimated to total approximately \$4 million in State fiscal year 2002-2003. This estimate is based on commissions paid out by New York State for State fiscal year 2001-2002, adjusted for declines in stamp sales attributable to the New York State and New York City cigarette tax rate increases, assuming a July 2, 2002 effective date for the New York City increase. Amendments to section 74.3 of the regulations ensure that these commissions paid by New York State are preserved notwithstanding the change in the New York City rate of tax on cigarettes.

This analysis is based upon the information and methodologies set forth above and upon discussions among personnel from the Department's Office of Counsel, Office of Tax Policy Analysis, Client Services Division, Bureau of Fiscal Management and Technical Services Division.

5. Local government mandates: The rule imposes no mandates upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: The rule imposes no paperwork requirements upon regulated parties beyond those required by statute.

7. Duplication: These amendments do not duplicate any existing Federal or State requirements.

8. Alternatives: The majority of the amendments made by the rule are a direct result of statutory changes; therefore, no significant alternatives exist. The alternative to amending section 74.3 of the regulations as is done by the rule would have been to not amend the regulations. If the regulations were not amended, the New York State commission rates would no longer be effective and licensed cigarette agents would no longer receive a commission from New York State for their services. New York State would experience a revenue gain of approximately \$3 million for the remainder of State fiscal year 2002-2003. This would have a negative impact on stamping agents.

9. Federal standards: The rule does not exceed any minimum standards of the Federal government for the same or similar subject areas.

10. Compliance schedule: There is no time frame necessary for compliance with the provisions of the rule.