

STATEMENT OF REASONED JUSTIFICATION FOR MODIFICATION OF THE RULE

DEPARTMENT OF TAXATION AND FINANCE

The Department of Taxation and Finance submitted for publication in the Rule Review section of the January 7, 2009, issue of the State Register summaries of rules that were adopted by the Commissioner of Taxation and Finance in 1999 and 2004, and a notice of the department's intent to review such rules pursuant to section 207 of the State Administrative Procedure Act. On December 30, 2008, this information was also posted on the department's web site (<http://www.tax.state.ny.us/rulemaker/regulations/fiveyearrev.htm>). Comments from the public concerning the continuation or modification of these rules were invited until February 23, 2009.

No public comments were received by the department concerning the 1999 amendments that were made to the "General" provisions found in Part 525 of the Sales and Use Taxes Regulations. Those amendments updated and simplified Part 525 by deleting text that merely repeated the statute or that was superfluous, unnecessarily complex, or no longer applicable. The amendments were adopted by the commissioner on July 26, 1999, and published in the State Register on August 11, 1999, (TAF-22-99-00001-A). The amendments were previously reviewed as part of the department's 2004 Rule Review published in the State Register on January 7, 2004. As a result of that review of the 1999 amendments, a Rule Review notice indicating that the amendments were being continued without modification was published in the State Register on April 21, 2004.

This notwithstanding, the department has determined as a result of its 2009 review that section 525.1, "Imposition of tax," is now dated and cannot be continued without modification. On July 31, 2008, the temporary municipal assistance taxes imposed under section 1107 of the Tax Law terminated, and the local taxes in New York City imposed under section 1210 of the law that had been suspended resumed (as amended by Part SS-1 of Chapter 57 of the Laws of 2008). Because section 525.1(b) of the regulations (as added by the

1999 amendments) currently provides that “[s]ales and compensating use taxes are imposed by section[s]... 1107,” this subdivision cannot be continued. Moreover, because this subdivision now includes other unnecessary citations and excludes citations to sections of the Tax Law that have been recently added, rather than maintain the subdivision, it is being repealed in its entirety by this rule. The delineation of the specific sections of law in this subdivision is not essential to the regulation because subdivision (a) of section 525.1 provides that the taxes are “imposed by article 28 and pursuant to the authority of article 29 of the Tax Law.” For this reason, the references to the specific sections of law in subdivision (c) of section 525.1 are also being repealed by the rule. The rule is in accord with the original intent of the 1999 amendments, which was to make the regulations more concise.

It is noted that the remainder of the amendments made in 1999 to these regulations are valid and are continued without modification.