

REGULATORY IMPACT STATEMENT

DEPARTMENT OF TAXATION AND FINANCE

1. Statutory authority: Subdivisions First and Fourteenth of section 171 of the Tax Law. Section 171, First of this statutory authority provides for the Commissioner of Taxation and Finance to make reasonable rules and regulations, which are consistent with law, that may be necessary for the exercise of the Commissioner's powers and the performance of the Commissioner's duties under the Tax Law. Section 171, Fourteenth also provides that the Commissioner shall perform other powers and duties conferred upon him by law.

2. Legislative objectives: The rule is being proposed pursuant to such authority and in accordance with the legislative objectives that the Commissioner equitably administer the provisions of the Tax Law and other applicable provisions of law under his jurisdiction. (For example, the State wireless communications service surcharge [County Law, section 309], the special assessments on hazardous wastes [Environmental Conservation Law, section 27-0923], and the waste tire management and recycling fees [Environmental Conservation Law, section 27-1913] are reported and paid to this Department.) With the advent of electronic commerce and electronic government, documents and payments are no longer exclusively filed or remitted in a traditional, tangible manner. The Commissioner, pursuant to such legislative objectives, is providing guidance with the promulgation of this rule as to when electronic documents and electronic payments are considered to be timely filed and timely paid to this Department.

3. Needs and benefits: The purpose of this rule is to update section 2399.2, "Timely mailing," of the Department's Procedural Regulations to take into account documents that are filed by electronic means and payments that are made by electronic funds withdrawal, credit cards, and debit cards. As do the Internal

Revenue Service (IRS) and many state and local taxing authorities, this Department encourages taxpayers to file certain documents and to pay certain taxes pursuant to its E-File/E-Pay programs. (See, for example, www.tax.state.ny.us/elf/, www.irs.gov/efile/, and www.taxadmin.org/fta/edi/.) In addition, beginning with the calendar year 2006, electronic filing of State and New York City personal income tax returns by preparers will be required in many instances (L. 2005, ch. 61, part Q). This rule generally conforms to IRS regulations and procedures, and establishes when these documents and payments are regarded as being timely. The rule is beneficial, for example, in that it provides taxpayers a safe harbor, similar to 26 CFR 301.7502-1(d), for documents that are assigned electronic postmarks by authorized electronic return transmitters. Like a United States postmark that is printed on a paper envelope, if an electronic document is assigned an electronic postmark on or prior to a due date, the document is considered to be timely filed, even if it is not received by the Department until sometime thereafter. The rule also makes technical and editorial changes to the affected sections of Part 2399, including a technical amendment to the existing delivery-messenger-service rule to reflect Chapter 577 of the Laws of 1997.

4. Costs: There are no quantifiable costs to regulated parties associated with the implementation of and continued compliance with this rule nor are there any costs to this agency, New York State, or its local governments for the implementation and continued administration of the rule. As indicated, the rule provides guidance to taxpayers who file returns or pay taxes by electronic means and sets forth in the regulations the information they need to know in order to comply with the Department's policies for timely electronic filing and timely electronic paying of their taxes. The rule, per se, does not impose any new filing or paying requirements (which are prescribed by law) and, consequently, does not result in any related costs in this respect. To the extent that the Department may assess penalties and interest under the rule's electronic postmark provisions in situations where it previously did not because of the lack of a clearly established rule, costs (if any) to regulated parties cannot be determined with any degree of certainty. Generally, the amount of

penalty and interest is driven by the amount of tax remitted late with a late filed return and the number of days the payment is late. Certain taxpayers may have serendipitously benefited while the Department was in transition to an electronic environment. However, the fact that some of these taxpayers may no longer benefit cannot be viewed as a true cost to regulated parties. The rule removes any potential for confusion as to when electronic documents and electronic payments are deemed timely. This analysis is based upon discussions among personnel from the Department's Office of Counsel, Taxpayer Services and Revenue Division, Office of Tax Policy Analysis, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau.

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 new reporting requirements, forms, or other paperwork upon regulated parties beyond those required by law and existing regulations.

7. Duplication: There are no relevant rules or other legal requirements of the Federal or State governments that conflict with this rule. This rule duplicates, or is otherwise in accord with, IRS regulations and policies in these regards. See 26 CFR 301.6311-2(b) and 301.7502-1(d), as well as www.irs.gov/efile/.

8. Alternatives: No significant alternatives to the rule were considered by this Department. In many instances, New York State tax returns are first transmitted to the IRS and then forwarded to this Department. Conforming the Department's timely e-filing and e-paying rules to that of the IRS leaves little discretion for alternatives, nor would alternatives serve any constructive purpose.

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

10. Compliance schedule: The rule will take effect on the date that the Notice of Adoption is published in the *State Register*. No additional time is needed in order for regulated parties to comply with this rule.