

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES
AND LOCAL GOVERNMENTS
DEPARTMENT OF TAXATION AND FINANCE

1. Effect of rule: The rule will affect approximately 65 distributors of tobacco products that import or cause to be imported into New York State, or manufacture roll-your-own cigarette tobacco in New York State, some of which may be small businesses as defined in section 102(8) of the State Administrative Procedure Act. All distributors of tobacco products that import, cause to be imported, or manufacture roll-your-own cigarette tobacco, regardless of the size of the business operation, are currently required to file a supplemental schedule to account for roll-your-own cigarette tobacco. The rule codifies this requirement.

2. Compliance requirements: The rule does not impose any adverse economic impact or any additional reporting, recordkeeping, or compliance requirements on local governments. The rule codifies the requirement that all distributors of tobacco products that import, cause to be imported, or manufacture roll-your-own cigarette tobacco, including those that are small businesses, must complete and attach to their monthly tobacco products tax return a supplemental schedule to account for roll-your-own cigarette tobacco imported or cause to be imported into New York State, or manufactured in New York State. The information contained in this supplemental schedule is used by the Department of Taxation and Finance to fulfill its responsibilities under the Public Health Law to provide certain information necessary for the administration and enforcement of the Tobacco Escrow Funds Act.

3. Professional Services: The rule itself imposes no requirements for professional services upon small businesses or local governments. However, an affected distributor of tobacco products may employ professional services in preparing its tax returns, including the supplemental schedule.

4. Compliance costs: There are no compliance costs to local governments as a result of this rule. With regard to the affected distributors of tobacco products, there are administrative costs associated with the filing of the supplemental schedule. This supplemental schedule is currently required by distributors of roll-your-own cigarette tobacco importing or causing to be imported into New York State, or manufacturing roll-your-own cigarette tobacco in New York State. The rule merely codifies this filing requirement. It is estimated that it takes an affected distributor of tobacco products that imports, causes to be imported, or manufactures roll-your-own cigarette tobacco thirty minutes to learn about the supplemental schedule, one hour for record keeping, and one hour and thirty minutes for preparing the supplemental schedule for a total of three hours. Assuming an hourly rate of \$17 an hour (equivalent with a clerical New York State position), the average cost for an affected distributor of tobacco products to complete the supplemental schedule as part of their monthly tobacco products tax return is \$51 a month. After the first filing, the costs of learning about the supplemental schedule could be reduced to zero for these distributors, resulting in compliance costs to each affected distributor of \$42.50 a month for each subsequent month. There are no variations in these costs for small businesses.

5. Economic and technological feasibility: The rule does not impose any economic or technological compliance burdens on small businesses or local governments.

6. Minimizing adverse impact: As discussed in more detail in the Regulatory Impact Statement, the Public Health Law, as it relates to the enforcement of the tobacco Master Settlement Agreement (MSA), was amended by Chapter 272 of the Laws of 2006 to require that non-participating manufacturers, as defined in the MSA, include units of roll-your-own cigarette tobacco imported or caused to be imported into New York State, or manufactured in New York State in determining their annual escrow payments. In addition, the Tax Department is required to provide certain information to the New York State Attorney General (AG) necessary for the administration and enforcement of the *Tobacco Escrow Funds Act*. Accordingly, beginning with the return for January 2007, distributors importing, causing to be imported, or manufacturing roll-your-own

cigarette are required to complete and attach a supplemental schedule to their monthly return to account for roll-your-own cigarette tobacco imported or caused to be imported into New York State, or manufactured in New York State. This rule codifies in regulation the additional reporting requirements needed to assist the AG's office with the enforcement of the Public Health Law. The rule does not distinguish between affected small businesses and other types of businesses as the information is necessary from all affected distributors.

Recognizing the impact of the additional reporting requirements, the Department has taken the following steps to minimize any adverse effects. The rule mirrors 20 NYCRR 75.1(f), which requires similar reporting requirements for New York State cigarette excise tax stamps affixed to packages of cigarettes by the agent. In addition, in developing the supplemental schedule for distributors of tobacco products importing, causing to be imported, or manufacturing roll-your-own cigarette tobacco, the Department modeled such schedule after Form CG-5/6-ATT, which requests similar information from New York State cigarette stamping agents that affix New York State tax stamps.

7. Small business participation: The following organizations were notified that the Department was in the process of developing this rule and were given the opportunity to participate in the its development: the New York State Association of Tobacco and Candy Distributors; the Association of Towns of New York State; the Deputy Secretary of State for Local Government and Community Services; the Division of Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York State Conference of Mayors and Municipal Officials; the Small Business Council of the New York State Business Council; and the Retail Council of New York State. The notified groups did not submit any comments concerning the rule.