

REGULATORY IMPACT STATEMENT

DEPARTMENT OF TAXATION AND FINANCE

1. Statutory authority: Tax Law, section 171, subdivisions First and Fourteenth, and section 475 (not subdivided); and Public Health Law, section 1399-oo, subdivision (10). Section 171, subdivision First of the Tax Law provides for the Commissioner of Taxation and Finance to make reasonable rules and regulations, which are consistent with the 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, subdivision Fourteenth of the Tax Law provides for the Commissioner to perform the other powers and duties conferred upon it by law. Section 475 (not subdivided) of the Tax Law provides that the Commissioner may require tax returns relating to the tax on cigarettes and tobacco products to be filed at such times and containing such information as it may prescribe. Section 1399-oo, subdivision (10) of the Public Health Law provides that the Commissioner of Taxation and Finance shall promulgate regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes, including roll-your-own tobacco, of each tobacco manufacturer selling such tobacco in the state.

2. Legislative objectives: This rule is being proposed pursuant to such authority and in accordance with the legislative objectives that the Commissioner equitably administers the provisions of the Tax Law and other applicable provisions of law under his jurisdiction to preserve State revenue. The rule is an exercise of the Commissioner's authority to require returns to contain the information as it may prescribe and to prescribe a rule that, consistent with the Tax Law, will enable the Department to assist with the enforcement of the Master Settlement Agreement (MSA), as described below in Section 3 of this statement.

3. Needs and benefits: 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. Beginning with the return for January 2007, distributors importing, causing to be imported, or manufacturing roll-your-own cigarette tobacco 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. Public Health Law (PHL) § 1399-oo(10), which defines “unit sold,” requires that the Tax Department provide certain information to the New York State Attorney General necessary for the administration and enforcement of the *Tobacco Escrow Funds Act*. For standard packs of cigarettes, this information is collected and reported by cigarette stamping agents on an attachment to their monthly cigarette tax reports pursuant to 20 NYCRR 75.1(f). Roll-your-own cigarette tobacco is taxable as a tobacco product under section 471-b of the Tax Law. New section 89.4 codifies in regulation similar reporting requirements imposed based on the amendments to the provisions of the Tobacco Escrow Funds Act as it applies to roll-your-own tobacco and mirrors 20 NYCRR 75.1(f). This amendment codifies in regulation the new filing requirements needed to assist in the enforcement of the Public Health Law.

4. Costs:

(a) Costs to regulated persons: The regulated parties affected by this rule are approximately 65 distributors of tobacco products that are currently filing form MT-203-ATT each month, reporting purchases of roll-your-own cigarette tobacco. There is no tax liability impact on these regulated parties for the implementation of and continuing compliance with the rule. There are administrative costs associated with the filing of the supplemental schedule. This schedule is currently required to be filed 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, as explained above in Section 3 of this statement. The rule merely codifies this 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 form,

one hour for record keeping, and one hour and thirty minutes for preparing the form 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 form as part of its monthly tobacco products tax return is \$51 a month. After the first filing, the costs of learning about the form 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. The time estimates are from the Department's Transaction and Transfer Tax Bureau of its Audit Division and are based on estimates of time to complete similar forms.

(b) Costs to the State and its local governments including this agency: This rule will have no cost in terms of revenue impact on New York State or its local governments. It is estimated that the implementation and continued administration of this rule will have no fiscal impact on the Department of Taxation and Finance. Distributors of tobacco products that import, cause to be imported, or manufacture roll-your-own cigarette tobacco were notified of the new filing requirement in December 2006, providing that beginning with the return for January 2007, (due February 20, 2007) distributors must complete and attach Form MT-203-ATT, *Information on Roll-Your-Own Cigarette Tobacco Manufactured or Imported by a Distributor*, to their monthly return, (Form MT-203, *Distributor of Tobacco Products Tax Return*). Form MT-203-ATT is mailed to all distributors each month along with Form MT-203.

(c) Information and methodology: These conclusions are based upon the information and methodology discussed above and an analysis of the rule from the Department's Taxpayer Guidance Division, Office of Tax Policy Analysis, Transaction and Transfer Tax Audit Bureau, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau.

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

6. Paperwork: The required schedule to account for the quantity of roll-your-own tobacco will result in minimal additional paperwork on the regulated parties as discussed in 4(b) above.

7. Duplication: There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

8. Alternatives: The intention of the Department is to codify in regulation the requirement of proper reporting by distributors of tobacco products that import, cause to be imported, or manufacture roll-your-own tobacco to ensure compliance with the Public Health Law. No alternatives exist.

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. The rule codifies in regulation the reporting requirement for distributors of tobacco products that import, cause to be imported, or manufacture roll-your-own cigarette tobacco to file, as part of the tobacco products tax return, a schedule to account for the quantity of such roll-your-own tobacco.