

REGULATORY IMPACT STATEMENT

DEPARTMENT OF TAXATION AND FINANCE

1. Statutory authority: Tax Law, sections 171, subd. First; 471; and 475. Section 171, subdivision First provides general authority for the Commissioner of Taxation and Finance to make reasonable rules and regulations that may be necessary for the exercise of the Commissioner's powers and the performance of his or her duties under the Tax Law. Section 471(1) imposes the tax on cigarettes, except where the State is "without power to impose such tax." Section 471(4) provides that cigarette stamping agents must provide suppliers and the Department with a certification, under penalty of perjury, that cigarettes will not be resold in violation of Article 20 of the Tax Law, which imposes the cigarette tax. Section 475 authorizes the Commissioner specifically to administer the tax on cigarettes and tobacco products imposed under Article 20 of the Tax Law, and also provides that returns may be required to be filed at such times and containing such information as may be prescribed.

2. Legislative objectives: The rule is being proposed pursuant to such authority to help enable the Department to better ensure compliance with the provisions contained in Article 20 of the Tax Law that call for the imposition of cigarette taxes. The rule provides a method whereby agents can determine whether their sales of untaxed packages of cigarettes would be in excess of the amount necessary for the use and consumption by the Indian nations or tribes and their members to better enable the agents to certify their compliance with Article 20, as required by section 471(4) of the Tax Law, with respect to their sales involving Indian reservations.

3. Needs and benefits: The rule implements the statutory provisions of section 471(4) of the Tax Law, which requires stamping agents who purchase unstamped packages of cigarettes from any person, including, but not limited to, a tobacco product manufacturer, that are intended for resale in or into New York State, to provide that person and the Department with a certification, under penalty of perjury, that the cigarettes will not be resold in violation of Article 20 of the Tax Law.

The rule provides procedures to be followed for the certification process, such as certification signature and swearing requirements, as well as the time periods covered by the certification. In addition, in order to facilitate the agent certification with respect to sales involving Indian reservations, the rule also provides a method whereby agents can determine whether their sales of untaxed packages of cigarettes would be in excess of the amount necessary for use or consumption by the Indian nations or tribes and their members. The rule sets forth a methodology for computing probable demand of the Indian nations or tribes and their members and special reporting requirements for sales of untaxed packages of cigarettes to Indian nations or tribes and reservation cigarette sellers, and provides for the publication on the Department's Web site of amounts of untaxed packages of cigarettes that may be sold for each Indian nation or tribe.

4. Costs: (a) Costs to regulated parties. The regulated parties affected by this rule are approximately 75 cigarette stamping agents located in New York State. Although the implementation of the statutory amendments regarding the certification of stamping agents will have fiscal consequences in terms of collection and payment of taxes that are already due under the Tax Law, the consequences are the result of the statute imposing the taxes. There will be no tax liability costs to these regulated parties for the implementation of and continuing compliance with this rule. The requirement for agents to provide the certification to their suppliers and to the Department is statutory. There are approximately 6 to 8 stamping agents who currently make sales involving Indian reservations that will be required to report their sales of untaxed packages of cigarettes involving Indian reservations to the Department within 24 hours. This will be a simple notification, resulting in minimal administrative costs.

(b) Costs to the State and its local governments including this agency. The cost of the development of the forms (CG-213 and CG-213-I) that stamping agents will be required to file and the cost of the technical memorandum that will be issued to explain the rule are attributable to the implementation of the statutory changes. In addition the cost associated with administering the statutory amendment is estimated at \$22,500

(50% staff time of a Tax Technician, salary grade 14). There are minimal administrative costs to the Department associated with receipt of the agents reports related to the sales of untaxed packages of cigarettes to Indian nations or tribes and creating and maintaining the Web content. Overall, it is estimated that the implementation and continued administration of the proposed amendment will have minimal fiscal impact on the Department. Although the implementation of the statutory amendments regarding the certification of stamping agents will have fiscal consequences in terms of collection of taxes that are due under the Tax Law, the consequences are the result of the statute imposing the taxes. This rule itself does not have any State or local fiscal consequences apart from the statutory amendments.

(c) Information and methodology. This analysis is based on review of the rule and statutory requirements and discussions among personnel from the Department's Office of Tax Policy Analysis, Office of Counsel, Office of Tax Enforcement and the Office of Budget and Management Analysis, including the 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 additional reporting on agents making sales of untaxed packages of cigarettes to an Indian nation or tribe, a reservation cigarette seller or any other person on a reservation. These agents must notify the Department within 24 hours of the sale.

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

8. Alternatives: An alternative method to limit the amount of untaxed packages being sold involving Indian reservations to amounts necessary for use or consumption by Indian nations or tribes and their members would be the coupon system set forth in section 471-e of the Tax Law. This rule does not implement this system, which has proved problematic and is the subject of litigation. This rule introduces a probable demand

formula developed by the Department to estimate the demand for cigarettes by Indian nations or tribes and their members. Although other states have implemented various approaches to assure a quantity of untaxed cigarettes, the rule provides that the Department will use Federal data because it is the most reliable and consistent source of information regarding cigarette demand.

9. Federal standards: This 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 and will apply to tax periods commencing with the first sales tax quarter (i.e., quarter beginning September 1, December 1, March 1, or June 1), beginning after such date.