

## REGULATORY IMPACT STATEMENT

### DEPARTMENT OF TAXATION AND FINANCE

1. Statutory authority: Tax Law, section 171, subdivision First; section 475 (not subdivided); and Chapter 85 of the Laws of 2002.

2. Legislative objectives: Sections 171(First) and 475 of the Tax Law provide for reasonable rules and regulations relating to the implementation and administration of the tax on tobacco products imposed by Article 20. On May 29, 2002, Chapter 85 of the Laws of 2002 was enacted. Among its provisions, various amendments (further described below) were made to Article 20, Tax on Cigarettes and Tobacco Products of the Tax Law.

3. Needs and benefits: Among its provisions, Chapter 85 amended Article 20 of the Tax Law to increase the excise tax on tobacco products from 20 percent to 37 percent of the wholesale price of such products, effective July 2, 2002. In addition, as a result of its amendments of the rates, Chapter 85 imposes a floor tax on tobacco products possessed in New York State for sale on July 1, 2002. This rule reflects the floor tax and sets forth the procedures by which the floor tax is to be computed, reported, and paid.

All distributors and dealers, both wholesale and retail, must compute the floor tax at the rate of 17 percent of the wholesale price of each tobacco product in inventory on which the tax was previously paid at the 20 percent rate. However, since the tobacco products tax is not intended to be paid by retail dealers, for purposes of computing the floor tax due on the July 1, 2002 inventory only, the rule provides an election for retail dealers to compute such tax using 50 percent of the price that they sell tobacco products at retail in New York State as the wholesale price. The election provided by this rule facilitates compliance with and the administration of the tobacco products floor tax provisions at the retail level of trade.

4. Costs: It is estimated that the implementation of, and continued compliance with, the rule will impose no fiscal or non-fiscal costs upon regulated parties. Any costs incurred by regulated parties are the result of the enactment of Chapter 85 of the Laws of 2002. Chapter 85 increased the rate of tax on tobacco products and requires dealers, including distributors to account for all tobacco products in inventory as of the close of business on July 1, 2002, and to pay a floor tax thereon.

It is estimated that there will be no fiscal impact to this Department for the implementation and continued administration of the rule. It is also estimated that the rule will have no fiscal impact on local governments throughout the state.

This analysis is based upon the information and methodologies set forth above and upon discussions among personnel from the Department's Office of Counsel, Office of Tax Policy Analysis, Client Services Division, Bureau of Fiscal Management and Technical Services Division.

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 paperwork requirements upon regulated parties beyond those required by statute.

7. Duplication: These amendments do not duplicate any existing Federal or State requirements.

8. Alternatives: The majority of the amendments made by the rule are a direct result of statutory changes. Section 89.3(c)(2) of the rule allows retail dealers an election in determining the basis of the floor tax, which is the "wholesale price" of the tobacco products. (See *Needs and benefits* above.) If this election was not provided, retail dealers would have difficulty determining the basis of the tax (i.e., the manufacturers price to distributors).

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

10. Compliance schedule: The increase in tax on tobacco products enacted by Chapter 85 of the Laws of 2002, requires dealers, including distributors to account for all tobacco products in inventory as of the close of business on July 1, 2002, and to pay a floor tax thereon. For taxpayers paying the floor tax in installments, the statute requires that the first installment is due no later than September 20, 2002. The remaining balance of tax is due no later than January 20, 2003.