

SUBSTANCE OF THE EMERGENCY RULE

DEPARTMENT OF TAXATION AND FINANCE

This rule concerns the collection of taxes on sales of cigarettes made on New York State Indian reservations as required by sections 471 and 471-e of the Tax Law, and provides procedures to be followed by New York State licensed cigarette stamping agents for the certification process required by section 471 of the Tax Law.

Section 1 of the rule adds a new section 74.6 to the cigarette tax regulations to address sales of cigarettes on Indian reservations and to describe the two statutory mechanisms (systems) for the delivery of quantities of tax-exempt cigarettes to Indian nations or tribes for the personal use and consumption of their qualified members based on their probable demand plus the amount needed for official nation or tribal use. Indian nations or tribes may elect to participate in the Indian tax exemption coupon system established in section 471-e of the Tax Law, or, if such election is not made, the prior approval system established in section 471(5) of the Tax Law will be used. Under the prior approval system New York state licensed cigarette stamping agents and wholesale dealers that have received prior approval from the Tax Department may sell certain quantities of stamped untaxed packages of cigarettes to Indian nations or tribes and reservation cigarette sellers. The rule provides specificity concerning the methodology and procedures to be used by the department for the statutorily required calculation of probable demand used in both systems.

Section 2 of the rule adds a new section 74.7 to the cigarette tax regulations relating to the statutory provisions of section 471(4) that require every cigarette stamping agent that purchases unstamped packages of cigarettes intended for resale in New York State to annually provide its supplier and the Tax Department with a certification, under penalty of perjury, that the cigarettes will not be resold in violation of Article 20 of the Tax Law. Procedures to be followed for the certification process are set forth in the rule, such as certification

signature and swearing requirements, time periods covered by the certification, and the contents of the certification. With regard to the contents, the certification must specifically provide that the agent will only make sales of tax-exempt stamped packages of cigarettes to Indian nations or tribes or to reservation cigarette sellers that are in accordance with the provisions of new section 74.6 of the rule.

Section 3 of the rule provides that it shall take effect on the date that the Notice of Emergency Adoption is filed with the Department of State and shall apply to all cigarettes sold on or after September 1, 2010.