

## REGULATORY IMPACT STATEMENT

### DEPARTMENT OF TAXATION AND FINANCE

1. Statutory authority: Tax Law, section 171, subdivision First; section 475 (not subdivided); and Chapter 1 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 cigarette tax imposed by Article 20 and the Cigarette Marketing Standards contained in Article 20-A of such law. On January 25, 2002, Chapter 1 of the Laws of 2002 was enacted. Among its provisions, various amendments (further described below) were made to Articles 20, Tax on Cigarettes and Tobacco Products, and 20-A, Cigarette Marketing Standards, of the Tax Law.

3. Needs and benefits: Among its provisions, Chapter 1 amended Article 20 of the Tax Law to increase the excise tax on cigarettes from \$1.11 to \$1.50 per pack of 20 cigarettes, effective April 3, 2002. Chapter 1 also imposes a floor tax on cigarettes possessed in New York State for sale on April 2, 2002. This rule reflects the floor tax and sets forth the procedures by which the floor tax is to be reported and paid. In addition, the rule amends the regulations to provide for commissions (allowed to cigarette tax agents for affixing tax stamps) based on the new face value of such stamps as of April 3, 2002. In providing for commissions, the rule maintains the current percentage rates per stamp and related threshold amount to which different rates apply. The resulting effect will be an increase in the amount of commission allowable per stamp to take into consideration the amount of the April 3, 2002, tax increase and the estimated decrease in volume of sales resulting from this change. Finally, the rule amends the computation of the basic cost of cigarettes to make such basic cost more realistic, based upon the current cigarette market.

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.

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.

Amendments to reflect the increased rate of cigarette tax in section 74.3 of the regulations, relating to the commissions allowed to cigarette agents, will affect commissions allowed. The current percentage rates and related threshold for determining commissions are not amended by the rule and will apply to the increased rate of cigarette tax. Total commissions are estimated to be \$4.3 million in State fiscal year 2002-2003. Total commissions for State fiscal year 2001-2002 are estimated to be \$3.1 million when the percentage rates of commissions and related threshold are applied to the cigarette tax rate in effect prior to April 3, 2002, under the statute.

In arriving at the estimated amount of commissions projected for fiscal year 2002-2003, commissions allowable were simulated for small, average and large scale agents. Each simulation displayed a similar level of increased commissions, based upon the higher rate of cigarette tax and the unchanged percentage rates and related threshold for determining commissions. In this analysis, agents were assumed to incur a 7 -8 percent loss in volume, in accordance with Division of the Budget forecast of the effect of the new statute.

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; therefore, no significant alternatives exist. The alternative to amending section 74.3 of the regulations as is done by the rule would have been to reduce the rates of commissions allowed to agents and increase the related threshold amount to which different rates apply. This also would have had a negative impact on regulated parties.

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: There is no time frame necessary for compliance with the provisions of the rule. The cigarette tax increase enacted by Chapter 1 of the Laws of 2002, requires all agents, wholesale dealers and retail dealers to account for all cigarettes and unaffixed tax stamps in inventory as of the close of business on April 2, 2002, and to pay a floor tax thereon. For taxpayers paying the floor tax in installments, the first installment is due no later than June 20, 2002. The remaining balance of tax is due no later than October 21, 2002. (Statutorily, the second installment is due on October 20, 2002, which is a Sunday. Section 2399.3 of the Procedural Regulations contained in Chapter IX of Title 20 NYCRR provides that a filing will be considered timely if performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday, i.e. October 21, 2002.)