

REGULATORY FLEXIBILITY ANALYSIS FOR
SMALL BUSINESSES AND LOCAL GOVERNMENTS

1. Effect of rule: There are 82 licensed cigarettes agents, approximately 180 licensed wholesale dealers (including the licensed cigarette agents), and approximately 22,000 licensed retail dealers (including approximately 4,500 that have multiple locations), some of which may be small businesses as defined in section 102(8) of the State Administrative Procedure Act, which will be affected by this rule.

2. Compliance requirements: Part RR-1 of Chapter 57 of the Laws of 2008, requires all agents, wholesale dealers and retail dealers, including small businesses, to pay an amount of tax on all cigarettes possessed for sale in New York State and unaffixed cigarette tax stamps in inventory as of the close of business on June 2, 2008, based on the increased rate of tax. Part RR-1 provides that the tax due on such inventory may be paid in two installments on August 20, 2008, and December 22, 2008, however at least 25% of the tax due on inventory based on the increased tax rate must be paid by August 20, 2008. The rule provides that returns must be filed by August 20, 2008, showing the quantity of all cigarettes and unaffixed stamps as of the June 2, 2008, close of business inventory. The rule provides procedures relating to the tax on the inventory, including rules for the physical inventory of cigarettes in vending machines that are located throughout the state. The rule also provides that the first installment cannot be less than \$500 or the entire tax due on inventory based if less than \$500.

3. Professional services: The rule itself imposes no requirements for professional services upon regulated parties that are small businesses. Depending on the nature or volume of a taxpayer's inventory of cigarettes and/or unaffixed tax stamps, such taxpayer may deem it necessary to employ additional professional services in order to comply with the provisions of the floor tax imposed by the statute.

4. Compliance costs: There will be no additional costs imposed on state or local governments, including the department. Part RR-1 of Chapter 57 of the Laws of 2008 increased the tax on cigarettes imposed by Article 20 from \$1.50 to \$2.75 cents for each 20 cigarettes or fraction thereof. The impact of the statutory increase in cigarette tax, which is ultimately borne by consumers, depends on the volumes involved. There is no tax liability impact on regulated parties that are small businesses, for the implementation of and continuing compliance with the rule as the increased cigarette tax reflected in the rule and the tax on the inventory based on the increased rate of tax are imposed by statute. Regulated parties that are small businesses, will need to conduct an inventory of the cigarettes and any unaffixed cigarette tax stamps as of the close of business on June 2, 2008. Based on this inventory, returns are required to be filed and any additional tax on this inventory based on the increased cigarette tax will need to be paid. This is necessitated by Part RR-1, which imposes a tax on such inventory and sets the payment dates. The rule does, however, provide that the first installment shall not be less than \$500 or the entire additional amount of cigarette tax due, if less than \$500. There are administrative/compliance benefits associated with the rule.

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. As a result of the statutory increase, annual stamping agent commissions (which are set by regulation and are paid out as a fraction of the applicable tax rate) will increase by approximately \$800,000 in the first full year of the increase. Smaller agents will likely receive the benefits of the commission rate applying to the increased tax for a longer period through the calendar year than larger agents because the commission rate is higher for amounts up to a specified dollar amount.

5. Economic and Technological Feasibility: The rule does not impose any economic or technological compliance burdens on small businesses or local governments.

6. Minimizing adverse impact: The majority of the amendments made by the rule are a direct result of statutory changes. An 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 in order to maintain the same amount of commission per stamp. Retaining the rate of commissions and applying that rate to the higher amount of tax results in an increase in the commissions on a per stamp basis and has a positive impact on regulated parties that are small businesses.

7. Small business and local government participation: The following organizations have been given an opportunity to participate in the rule's development: the Association of Towns of New York State; the Empire State Development, Division of Small Business; the National Federation of Independent Businesses; the New York Association of Convenience Stores; the New York State Association Counties; the New York State Association of Service Stations & Repair Shops, Inc.; the New York State Association of Wholesale Marketers & Distributors; the New York Conference of Mayors and Municipal Officials; the New York State Department of State, Division of Local Government Services; the Small Business Council of the New York State Business Council; and the Retail Council of New York State. No comments, suggestions, or recommendations were received.