

REGULATORY IMPACT STATEMENT

DEPARTMENT OF TAXATION AND FINANCE

1. Statutory authority: Tax Law, section 171, subdivision First; section 475 (not subdivided); section 1142(1); section 1250 (not subdivided); and Part RR-1 of Chapter 57 of the Laws of 2008. Section 171, subdivision First of the Tax Law provides for the Commissioner of Taxation and Finance to make reasonable rules and regulations, which are consistent with the law, that may be necessary for the exercise of the Commissioner's powers and the performance of the Commissioner's duties under the Tax Law. Section 475 (not subdivided) of the Tax Law provides such authority to the Commissioner specifically with respect to the cigarette tax imposed by Article 20 of the Tax Law. Subdivision (1) of section 1142 of Article 28 and section 1250 of Article 29 of the Tax Law also provide for the adoption of rules and regulations that are appropriate to carry out and jointly administer the New York State and local sales and compensating use taxes imposed by and pursuant to the authority of such Articles. Part RR-1 of Chapter 57 of the Laws of 2008 amended sections 471(1) and 471-a of the Tax Law to increase the tax on cigarettes from \$1.50 to \$2.75 cents for each 20 cigarettes or fraction thereof. In addition, Part RR-1 imposes a tax on inventories of cigarettes possessed for sale in New York State based on the increased cigarette tax, subject to the terms and conditions as the Commissioner of Taxation and Finance may prescribe.

2. Legislative objectives: The rule is being proposed pursuant to such authority to administer statutory amendments made by Part RR-1 of Chapter 57 of the Laws of 2008 to increase the rate of the cigarette tax imposed by Article 20 of the Tax Law.

3. Needs and benefits: Part RR-1 of Chapter 57 of the Laws of 2008 amended Article 20 of the Tax Law to increase the tax on cigarettes from \$1.50 to \$2.75 cents for each 20 cigarettes or fraction thereof effective June 3, 2008. Additionally, Part RR-1 imposes a tax on the inventory of cigarettes possessed for sale

in New York State and any unaffixed stamps as of the close of business June 2, 2008, based on the increased rate of tax.

The purpose of these amendments is to make necessary regulatory changes related to the implementation of these provisions, including providing procedures relating to the tax on the inventory, and sets the commissions allowable to cigarette agents for affixing cigarette stamps based on the new face value of such stamps as of June 3, 2008. 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 June 3, 2008 tax increase. Finally, the rule updates the calculation of the basic cost of cigarettes and makes other technical updates.

4. Costs:

(a) Costs to regulated persons: The regulated parties affected by this rule 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). 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 the regulated parties 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 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.

(b) Costs to the State and its local governments including this agency: This rule will not have a revenue impact on New York State or its local governments. It is estimated that the implementation and continued administration of this rule will have no fiscal impact on the Department of Taxation and Finance.

(c) Information and methodology: These conclusions are based upon the application of the current commission rate to stamps at the higher rate of tax and the anticipated volumes of cigarettes subject to tax, as well as an analysis of the rule from the Department's Taxpayer Guidance Division, Office of Tax Policy Analysis, Office of Counsel, Transaction and Transfer Tax Audit Bureau, Office of Budget and Management Analysis, and 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: Regulated parties will need to file a return on or before August 20, 2008, showing the quantity of cigarettes possessed for sale in New York State and any unaffixed cigarette tax stamps as of the close of business on June 2, 2008. This is necessitated by Part RR-1 of Chapter 57 of the Laws of 2008, which imposes a tax on such inventory and sets the payment dates. Form CG-11, Cigarette Floor Tax Return, was mailed to affected parties on May 2, 2008 and is available on the Department's Web site.

The rule provides that the tax should be paid by check or money order. Allowing electronic payments associated with this limited time filing requirement would not be practical.

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. 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.

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: Part RR-1 of Chapter 57 of the Laws of 2008, requires all agents, wholesale dealers and retail dealers to pay an amount of tax on all cigarettes 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 first installment is due no later than August 20, 2008. The remaining balance of tax is due no later than December 22, 2008. The rule provides that a return showing the quantity of such cigarettes and unaffixed stamps must be filed on or before August 20, 2008. A notice explaining the cigarette tax increase and the

related tax on inventory as of the close of business on June 2, 2008, along with Form CG-11, Cigarette Floor Tax Return, were mailed to affected parties on May 2, 2008 and are available on the Department's Web site.