

STATEMENT OF REASONED JUSTIFICATION FOR MODIFICATION OF THE RULE

DEPARTMENT OF TAXATION AND FINANCE

The Department of Taxation and Finance submitted for publication in the Rule Review section of the January 3, 2007, State Register summaries of rules that were adopted by the Commissioner of Taxation and Finance in 1997 and 2002, and a notice of the Department's intent to review such rules pursuant to section 207 of the State Administrative Procedure Act. This information was also posted to the Department's Web site (<http://www.tax.state.ny.us/rulemaker/regulations/fiveyearrev.htm>) on January 2, 2007. Comments from the public concerning the continuation or modification of these rules were invited until February 20, 2007.

The 2002 rule amended sections 70, 74, 79, 80 and 82 of the Cigarette Tax and Cigarette Marketing Standards regulations, as published in Subchapter I of Chapter I of Title 20 NYCRR. The rule, which reflected the statutory increase in the rate of New York State cigarette excise tax that was effective on April 3, 2002; provided for commissions allowable to cigarette tax agents; effectuated the floor tax on cigarettes and unaffixed stamps in inventory; and more realistically reflected the basic cost of cigarettes, was adopted by the Commissioner on March 14, 2002, and published in the State Register on March 27, 2002, (I.D. # TAF-13-02-00010-A).

As a result of its 2007 review, the Department determined that some of the sections that were amended in 2002 are dated and should not be continued without modification. The rule updates sections 74.2 and 82.2 of the regulations by deleting obsolete references to the 75 cent cigarette tax stamp and packages of 10 cigarettes to conform to section 1399-gg of the Public Health Law, which was amended in 2004 to prohibit the sale or distribution of cigarettes in New York State in packages containing fewer than 20 cigarettes. As a result, the Department discontinued the 75 cent cigarette tax stamp that was applicable to packages of 10 cigarettes.

The rule also adds a statutory cross-reference to the prepaid sales tax on cigarettes imposed under Tax Law section 1103 and a regulatory cross-reference to custom stamping.

Other than the change made to sections 74.2 and 82.2, the 2002 rule remains valid and is continued without modification.