

## REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES

### AND LOCAL GOVERNMENTS

#### DEPARTMENT OF TAXATION AND FINANCE

1. Effect of rule: The rule will affect approximately 280 licensed cigarette wholesale dealers, including wholesalers who are also stamping agents, and approximately 93 wholesale dealers of tobacco products that are not also licensed as distributors of tobacco products, some of which may be small businesses as defined in section 102(8) of the State Administrative Procedure Act. The rule does not distinguish between different business sizes. The rule affects all of these wholesale dealers in the same manner, regardless of the size of the business operation.

2. Compliance requirements: The rule will not impose any adverse economic impact or any additional reporting, recordkeeping, or compliance requirements on local governments. The rule will require wholesale dealers of cigarettes, including those that are small businesses, to file quarterly informational returns with the Department detailing their sales of cigarettes and other products to retail dealers for the corresponding quarter. In addition, wholesale dealers of tobacco products that are not also distributors, including those that are small businesses, are required to file quarterly informational returns with the Department, rather than monthly informational returns. The informational returns for wholesale dealers of cigarettes and tobacco products must be filed on or before the twentieth day of the month following the end of the quarterly reporting period and must reflect the wholesale dealer's activities for the preceding quarter.

3. Professional Services: The rule itself imposes no requirements for professional services upon small businesses or local governments. However, an affected wholesale dealer may decide that professional services, in addition to those it may already employ to prepare its tax returns, are needed in order for the wholesale dealer to comply with the additional reporting requirements of the rule.

4. Compliance costs: There are no compliance costs to local governments as a result of this rule. With regard to affected wholesale dealers of cigarettes during the first quarterly reporting period that the rule is in effect it is estimated that it will take a cigarette wholesale dealer one hour and thirty minutes to learn the new filing requirements, four hours to reprogram its computer system to capture the information needed to complete the informational returns, and one hour to complete the return, for a total of six hours and thirty minutes. Assuming an hourly rate of \$36 an hour (equivalent of a grade 23 New York State employee position) to do the reprogramming and complete the informational return, the average cost to a wholesale dealer of cigarettes to comply for the first quarterly reporting period will be \$234. After the first quarterly reporting period, the cost of learning the new requirements and programming could be reduced to zero for these cigarette wholesale dealers, resulting in compliance costs to each of them of \$36 in the second quarterly reporting period and thereafter. Wholesale dealers of tobacco products will experience a reduction in administration cost based on the rule reducing their filing frequency from monthly to quarterly. There are no variations in these costs for small businesses.

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: This rule provides for filing of informational returns for wholesale dealers of cigarettes on a quarterly basis. The rule could have required informational returns to be filed monthly, to correspond with the current filing of informational returns for wholesale dealers of tobacco products, but the Department deemed quarterly filing to be sufficient. The rule does not require information relating to cigarettes purchased or acquired, but limits information requested to cigarettes sold or transferred during the quarter. The rule does not require information relating to cigarette vending machines as cigarettes sold through vending machines are dispensed to consumers and the main focus of the requested information is sales to retail dealers. In addition, the rule reduces filing requirements of the informational returns for

wholesale dealers of tobacco products from monthly to quarterly. The quarterly reporting periods for these informational returns correspond to sales tax quarters for purposes of efficient recordkeeping.

7. Small business participation: The following organizations were notified that the Department was in the process of developing this rule and were given an opportunity to participate in its development: the Association of Towns of New York State; the Division of Local Government Services of New York State Department of State; the Division of Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York State Conference of Mayors and Municipal Officials; the Small Business Council of the New York State Business Council; the Retail Council of New York State; and the New York Association of Convenience Stores. The notified groups did not submit any comments concerning this rule.

In addition, it should be noted that the Audit Division of the Department recently requested wholesale dealers of cigarettes to provide information regarding their sales of cigarettes and other products to each customer. While the New York State Association of Wholesale Marketers and Distributors indicated some concerns about providing information requested by the Audit Division, the wholesale dealers have largely provided the information requested. Further, the Department provided the New York State Association of Wholesale Marketers and Distributors a draft of the proposed regulation for review. The association was asked to provide any concerns their members had regarding the proposed regulations. The Department did not receive any comments.