

## REGULATORY IMPACT STATEMENT

### DEPARTMENT OF TAXATION AND FINANCE

1. Statutory authority: Tax Law, sections 171, subdivision First; 475 (not subdivided), and 1142(12).

Section 171, subdivision First of the Tax Law authorizes the Commissioner of Taxation and Finance to make reasonable rules and regulations that may be necessary for the exercise of the Commissioner's powers and duties under the Tax Law. Section 475 provides the same authority as it relates specifically to the administration of the tax on cigarettes and tobacco products imposed under Article 20 of the Tax Law, and also provides that returns may be required to be filed at such times and containing such information as may be prescribed. Subdivision (12) of section 1142 provides 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 and the taxes imposed by Article 20, including the joint reporting of such taxes and the information prescribed to be included on any return submitted to the commissioner.

2. Legislative objectives: The rule is being proposed pursuant to such authority and in accordance with the legislative objectives to help enable the Department to better ensure compliance with the provisions contained in Articles 20 and 28 of the Tax Law.

3. Needs and benefits: The rule seeks to address certain tax compliance issues concerning the excise tax on cigarettes, as well as the sales and use taxes on cigarettes and other products supplied to retail dealers by wholesale dealers of cigarettes. The excise tax on cigarettes and the prepaid sales tax on cigarettes are paid "upstream" by the stamping agent when the cigarette tax stamps are purchased, then added and collected as part of the selling price along the distribution chain to wholesale dealers, retail dealers and the ultimate customer. In addition to cigarettes, wholesale dealers may supply a variety of other products, such as candy, snacks, soft drinks and other sundries, to the retail dealer for resale. The Department has recently requested information

from wholesale dealers regarding their sales of cigarettes and other products supplied to each retail dealer. While the Department has generally been able to obtain this type of information pursuant to its request, the Department currently does not receive reports containing the level of sales information described by this rule on an ongoing regular and systematic basis. The rule will require wholesale dealers of cigarettes, including wholesale dealers that are also stamping agents, to file quarterly informational returns with the Department detailing their sales of cigarettes and other products to retail dealers for the corresponding quarter. The returns will enable the Department to better track the distribution of cigarettes and other products in New York State. It will better enable the Department to reconcile information about products purchased and sold by retail dealers in an effort to ensure compliance, more complete reporting by the retail dealer, and the correct payment of the excise tax, as well as the sales and use taxes on cigarettes and other products. Cigarette vending machine information is not required on the wholesale dealer informational return as cigarettes sold through vending machines are dispensed to consumers and the main focus of the requested information is sales to retail dealers.

To ensure that the treatment of wholesale dealers of tobacco products is consistent with the treatment of wholesale dealers of cigarettes, the rule provides that wholesale dealers of tobacco products must file quarterly informational returns, rather than monthly informational returns, as currently required. The Department believes that quarterly filing is sufficient for its purposes and would be less burdensome to regulated parties.

4. Costs: (a) Costs to regulated parties. The regulated parties affected by this rule are 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. There will be no tax liability costs to these regulated parties for the implementation of and continuing compliance with this rule. There will, however, be administrative costs associated with the requirements of the rule for the filing of the quarterly informational returns for wholesale dealers of cigarettes. It is estimated it will take a wholesale dealer of cigarettes 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 informational 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 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 costs based on the rule reducing their filing frequency from monthly to quarterly.

(b) Costs to the State and its local governments including this agency. This rule will have no cost in terms of revenue impact on New York State or its local governments. It is anticipated that it will assist in achieving compliance with the tax on cigarettes, tobacco products and other products sold by the retail dealer. There will be costs to this agency with regard to the implementation and continued administration of the rule. The rule will necessitate the development of quarterly informational returns for wholesale dealers of cigarettes. Minor revisions are also needed on four forms to accommodate the change in filing of the informational returns for wholesale dealers of tobacco products. In addition, a technical memorandum will be issued explaining these changes. The estimated cost of these revisions, including printing and mailing costs, is approximately \$5,500.

(c) Information and methodology. This analysis is based on discussions among personnel from the Department's Office of Tax Policy Analysis, Office of Tax Enforcement and the Office of Budget and Management Analysis, including the 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: Additional reporting and paperwork requirements will be imposed on the wholesale dealer of cigarettes, who will be required to file a quarterly informational returns detailing their sales of cigarettes and other products to retail dealers for the corresponding quarter. The reporting requirements for wholesale dealers of tobacco products will be decreased, as the information for such wholesale dealers will be required quarterly rather than monthly. 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, which conforms to the sales tax quarter, and must reflect the wholesaler dealer's activities for the preceding quarter. Every return must contain a certification that the information reported is true, correct, and complete. Further, wholesale dealers must maintain complete and accurate records to substantiate the information reported on the returns.

7. Duplication: There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

8. Alternatives: The rule could have required the filing of monthly informational returns for wholesalers of cigarettes, similar to the current requirement for wholesale dealers of tobacco products, but the Department deemed receiving the information quarterly to be sufficient. In addition, the rule could also have required information relating to purchases of cigarettes by cigarette wholesale dealers, but, instead, limits the required information to their sales and other transfers. Further, the Department is not requiring cigarette vending machine information as cigarettes sold through vending machines are dispensed to consumers and the main focus of the requested information is sales to retail dealers.

9. Federal standards: This rule does not exceed any minimum standards of the Federal government for the same or similar subject area.

10. Compliance Schedule: The rule will take effect on the date that the Notice of Adoption is published in the State Register and will apply to quarterly reporting periods beginning more than 60 days after such date.

The rule will require approximately 280 wholesale dealers of cigarettes to file quarterly informational returns with the Department. Approximately 93 wholesale dealers of tobacco products will be required to file quarterly informational returns rather than monthly informational returns. It is estimated that 60 days will be a sufficient amount of time to enable these regulated parties to achieve compliance with this requirement.