

REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS
DEPARTMENT OF TAXATION AND FINANCE

1. Effect of rule: The adoption of rules that provide repurchase agreements and securities lending agreements held by registered securities brokers or dealers under Article 9-A of the Tax Law are not investment capital so that the income and expenses from the agreements must be included in the computation of business income is applicable to all registered securities brokers and dealers, large and small. There are approximately 2500 to 3000 registered securities brokers and dealers subject to the business corporation franchise tax. We do not have information to estimate the number of these registered securities brokers and dealers that might be small businesses with any degree of certainty. Local governments are not affected. The rule does not affect the New York City General Corporation Tax, but New York City could consider similar changes with respect to its tax.

2. Compliance requirements: No additional time is needed in order to comply with this rule.

3. Professional services: No additional professional services beyond those already employed by a small business in preparing its taxes will be required to comply with this rule.

4. Compliance costs: The rule does not impose any new reporting, recordkeeping or other compliance costs on regulated parties. The change in interpretation of the statute may have an impact on the tax liability of particular taxpayers. This is a function of what the Department believes is a better interpretation of the statutory provisions and the particular circumstances of the taxpayer. The Department has determined that ultimately there is no measurable tax liability impact on an industry-wide basis between the interpretation of the current rule, with a proper matching of expenses to income, and this rule. The rule would facilitate voluntary compliance by providing a better interpretation of the business and investment capital provisions of the statute.

This would lead to the appropriate matching of business income and expenses as well as investment income and expenses. There would be no variation in costs for small businesses. There are no costs for local governments.

5. Economic and Technological Feasibility: This rule does not impose any adverse economic and technological requirements on small business or local governments.

6. Minimizing adverse impact: The rule does not distinguish between affected small businesses and other types of businesses as there is no distinction in the statute being interpreted. The rule places no burdens on small businesses or local governments.

7. Small business and local government participation: The following organizations are being given an opportunity to participate in the rule's 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 Conference of Mayors and Municipal Officials; the Small Business Council of the New York State Business Council; and the Retail Council of New York State. In addition, drafts of this rule were sent to the following: the Business Council of New York State, the New York State Bar Association, the Association of Bar of the City of New York, the New York State Society of CPAs, the Securities Industry and Financial Markets Association (SIFMA), and the New York City Department of Finance. The Department worked extensively with New York City Department of Finance and industry, primarily SIFMA and its predecessor, the Securities Industry Association (SIA) on the issues addressed in this rule.