

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

1. Effect of rule: This rule amends section 105.20(e)(1) of the personal income tax regulations to remove provisions of the regulation allowing for a “temporary stay” exception from the definition of permanent place of abode in determining residency for personal income tax purposes. The elimination of these provisions results from a what the Department believes is a better and clearer interpretation of section 605(b)(1) of the Tax Law.

This rule will have no effect on local governments, except as to the impact on New York City personal income tax discussed in the Regulatory Impact Statement. It also will also have no effect on small businesses. The rule imposes no reporting requirements, forms, or other paperwork upon small businesses beyond those required by existing law and regulations. The impact of the rule is not on small businesses but on certain non-domiciliaries who maintain a permanent place of abode within New York State. Some small businesses may have to begin withholding New York City income tax for certain non-domiciliary employees working in New York City, which does not impose income tax on non-residents.

2. Compliance requirements: The promulgation of this rule will not require small businesses or local governments to submit any new information, forms or other paperwork.

3. Professional services: Many small businesses currently utilize bookkeepers, accountants and professional payroll services in order to comply with existing withholding requirements. This rule will do nothing to encourage or discourage the use of any of such services.

4. Compliance costs: These changes will place no additional burdens on small businesses and local governments. The change in the definition of resident will affect certain individuals who are not domiciled in the State. See the Regulatory Impact Statement for discussion of the impact on these individuals.

5. Economic and technological feasibility: This rule does not impose any economic or technological compliance burdens on small businesses or local governments.

6. Minimizing adverse impact: The rule does not adversely impact small businesses or local governments.

7. Small business and local government 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 National Federation of Independent Businesses; the Division for Small Business of Empire State Development; the New York State Association of Counties; the Association of Towns of New York State; the New York Association of Convenience Stores; the Small Business Council of the New York State Business Council; the Retail Council of New York State; the New York State Conference of Mayors and Municipal Officials; the Office of Local Government and Community Services of the New York State Department of State; the Tax Section of the New York State Bar Association; the National Tax Committee for the National Conference of CPA Practitioners; and the New York State Society of CPAs. The Department also discussed the rule with the New York City Department of Finance. Only the New York State Society of CPAs submitted comments. The Society acknowledged the problematic nature of the temporary stay rule, but suggested a “safe harbor” analysis based on the duration of the individual’s stay in New York and the individual’s ties to his or her domicile. The Department concluded that this alternative would not resolve the fundamental problems caused by the temporary stay concept.