

SUBSTANCE OF THE EMERGENCY RULE

DEPARTMENT OF TAXATION AND FINANCE

This rule amends the Cigarette Tax and the Cigarette Marketing Standards regulations, as published in Title 20 NYCRR, in response to legislative changes enacted on June 21, 2010, by Part D of Chapter 134 of the Laws of 2010.

Part D of Chapter 134 of the Laws of 2010 amended Article 20 of the Tax Law to increase the excise tax on cigarettes from \$2.75 for each 20 cigarettes, or fraction thereof, to \$4.35, effective July 1, 2010. It also imposes a tax on the inventory of cigarettes possessed for sale in New York State and any unaffixed stamps as of the close of business on June 30, 2010, based on the increased rate of excise tax. The purpose of the rule is to make necessary regulatory changes related to implementation of these provisions and set the rate of commissions allowable to cigarette agents for affixing cigarette stamps relating to the new rate of tax. The amendments also update the calculation of the basic cost of cigarettes for purposes of the Cigarette Marketing Standards Act (CMSA). The rule was previously adopted as an emergency measure on June 29, 2010.

Sections 1, 2, 3 and 5 of the rule make technical and conforming amendments to sections 70.1, 74.1, 74.2 and 74.5, respectively, of the Cigarette Tax regulations to reflect the statutory increase in the excise tax on cigarettes and the new denominations of stamps relating to the new rate of tax.

Section 4 of the rule amends section 74.3 of the regulations, which provides the schedule by which commissions (pursuant to section 472 of the Tax Law) are allowed to licensed cigarette agents as compensation for affixing stamps to packages of cigarettes. The rule amends current language to reflect the change in the amount of tax payment represented by the tax stamps, which is the basis upon which the commissions are computed. The current percentage rates and related threshold used to compute commissions are not amended by this rule, resulting in an increase in the commissions on a per stamp basis.

Section 6 of the rule repeals section 79.2 of the regulations and adds a new section 79.2 to reflect the additional amount of tax on the inventory of cigarettes possessed for sale in New York State and any unaffixed tax stamps as of the close of business on June 30, 2010, based on the increased rate of excise tax. For purposes of taking the required June 30, 2010, close of business inventories, the rule allows dealers that operate vending machines to estimate the contents of such machines at one-half of their normal fill capacities. This provision results from the fact that it may not be possible to take an actual physical inventory of every machine a dealer operates in the State on a given day. The rule also outlines the procedures by which a tax on existing inventories will be reported and paid. Pursuant to the statutory provisions, the additional amount of tax on existing inventories must be paid no later than September 20, 2010.

Section 7 of the rule amends section 80.2 of the regulations to reflect the new rate of tax in the computation of the basic cost of cigarettes for purposes of the CMSA.

Sections 8, 9, 10, and 11 of the rule make technical amendments to sections 82.2, 82.3, 82.4 and 82.5 of the Cigarette Marketing Standards regulations, respectively, to reflect the change to the basic cost of cigarettes made by section 7 of the rule. These changes are carried through the illustrations outlining the minimum prices at which cigarettes may be sold at various points in the distribution chain.