

REGULATORY IMPACT STATEMENT

DEPARTMENT OF TAXATION AND FINANCE

1. Statutory authority: Tax Law, sections 171, subdivision First; 472(1); 475 (not subdivided), of the Tax Law; and Part D of Chapter 134 of the Laws of 2010. Section 171, subdivision First of the Tax Law provides for the Commissioner of Taxation and Finance to make reasonable rules and regulations consistent with the law that may be necessary for the exercise of the Commissioner's powers and the performance of the Commissioner's duties under the Tax Law. Section 472(1) of the Tax Law directs the Commissioner to prescribe stamps and authorizes the Commissioner to prescribe commissions. Section 475 (not subdivided) of the Tax Law provides such authority to the Commissioner specifically with respect to the cigarette tax imposed by Article 20 of the Tax Law. Part D of Chapter 134 of the Laws of 2010 amended sections 471(1) and 471-a of the Tax Law to increase the tax on cigarettes from \$2.75 to \$4.35 for each 20 cigarettes or fraction thereof. In addition, Part D of Chapter 134 imposes a tax on inventories of cigarettes possessed for sale in New York State based on the increased cigarette tax, subject to the terms and conditions as the Commissioner of Taxation and Finance may prescribe.

2. Legislative objectives: The rule is being proposed pursuant to such authority to administer statutory amendments made by Part D of Chapter 134 of the Laws of 2010 to increase the rate of the cigarette tax imposed by Article 20 of the Tax Law. This statutory rate increase was necessary to provide additional revenue for the 2010 – 2011 state fiscal year to support health care programs.

3. Needs and benefits: Part D of Chapter 134 of the Laws of 2010 amended Article 20 of the Tax Law to increase the tax on cigarettes from \$2.75 to \$4.35 for each 20 cigarettes or fraction thereof effective July 1, 2010. Additionally, Part D of Chapter 134 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 June 30, 2010, based on the increased rate of tax.

The purpose of these amendments is to make necessary regulatory changes related to the implementation of these provisions, including providing procedures relating to the tax on the inventory, and to set the commissions allowable to cigarette agents for affixing cigarette stamps based on the new face value of such stamps as of July 1, 2010. In providing for commissions, the rule maintains the current percentage rates per stamp and related threshold amount to which different rates apply. The resulting effect will be an increase in the amount of commission allowable per stamp to take into consideration the amount of the July 1, 2010 tax increase. Finally, the rule updates the calculation of the basic cost of cigarettes.

4. Costs:

(a) Costs to regulated persons: The regulated parties directly affected by this rule are 73 licensed cigarettes agents; approximately 265 licensed wholesale dealers (including the licensed cigarette agents), 103 of which are strictly vending machine operators; and approximately 22,000 licensed retail dealers (including approximately 4,500 that have multiple locations). Part D of Chapter 134 of the Laws of 2010 increased the tax on cigarettes imposed by Article 20 from \$2.75 to \$4.35 for each 20 cigarettes or fraction thereof. The impact of the statutory increase in cigarette tax, which is ultimately borne by consumers, depends on the volumes involved. There is no tax liability impact on the regulated parties for the implementation of and continuing compliance with the rule, as the increased cigarette tax reflected in the rule and the tax on the inventory based on the increased rate of tax are imposed by statute. Regulated parties needed to conduct an inventory of the cigarettes and any unaffixed cigarette tax stamps as of the close of business on June 30, 2010. Based on this inventory, returns are required to be filed and any additional tax on this inventory based on the increased cigarette tax will need to be paid. This is necessitated by Part D of Chapter 134 of the Laws of 2010, which imposes a tax on such inventory and sets the payment date. Amendments to reflect the increased rate of

cigarette tax in section 74.3 of the regulations, relating to the commissions allowed to cigarette agents, will affect commissions allowed. The current percentage rates and related threshold for determining commissions are not amended by the rule and will apply to the increased rate of cigarette tax. As a result of the statutory increase and the retention of the current percentage rates and related threshold for determining commissions, annual stamping agent commissions (which are set by regulation and are paid out as a fraction of the applicable tax rate) will increase by approximately \$850,000 in the first full year of the increase. Smaller agents will likely receive the benefits of the commission rate applying to the increased tax for a longer period through the calendar year than larger agents because the commission rate is higher for amounts up to a specified dollar amount.

(b) Costs to the State and its local governments including this agency: This rule does not have a revenue impact on New York State or its local governments. As a result of the statutory increase and the retention of the current percentage rates and related threshold for determining commissions, annual stamping agent commissions (which are set by regulation and are paid out as a fraction of the applicable tax rate) will increase by approximately \$850,000 in the first full year of the increase. It is estimated that the implementation and continued administration of this rule will have no fiscal impact on the Department of Taxation and Finance.

(c) Information and methodology: These conclusions are based upon the application of the current commission rate to stamps at the higher rate of tax and the anticipated volumes of cigarettes subject to tax, as well as an analysis of the rule from the Department's Taxpayer Guidance Division, Office of Tax Policy Analysis, Office of Counsel, Audit Division, Office of Budget and Management Analysis, and 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: Under the statute and in accordance with the rule, which has been adopted as an emergency measure, regulated parties need to file a return on or before September 20, 2010, showing the quantity of cigarettes possessed for sale in New York State and any unaffixed cigarette tax stamps, as of the close of business on June 30, 2010. This is necessitated by Part D of Chapter 134 of the Laws of 2010, which imposes a tax on such inventory and sets the payment date. Form CG-11, Cigarette Floor Tax Return, has been mailed to affected parties and is available on the Department's Web site.

The rule provides that the tax should be paid by check or money order. Allowing electronic payments associated with this one-time limited time filing requirement would not be practical.

7. Duplication: These amendments do not duplicate any existing Federal or State requirements.

8. Alternatives: The majority of the amendments made by the rule are a direct result of statutory changes. An alternative to amending section 74.3 of the regulations as is done by the rule would have been to reduce the rates of commissions allowed to agents in order to maintain the same amount of commission per stamp. Retaining the rate of commissions and applying that rate to the higher amount of tax results in an increase in the commissions on a per stamp basis. This is consistent with the handling of commissions for previous rate increases. Section 79.2 of the regulations provides for taking a physical inventory of all cigarettes possessed in the State as of close of business on June 30, 2010. Subdivision (b) of section 79.2 provides for estimating of vending machines that cannot be physically inventoried of close of business on June 30, 2010, rather than requiring each vending machine in the state to be physically inventoried. Allowing commissions to increase and providing an alternative for physical inventorying of each vending machine in the state will have a positive impact on regulated parties.

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

10. Compliance schedule: Part D of Chapter 134 of the Laws of 2010, requires all agents, wholesale dealers and retail dealers to pay an amount of tax on all cigarettes and unaffixed cigarette tax stamps in inventory as of the close of business on June 30, 2010, based on the increased rate of tax. This amount of tax due must be paid by September 20, 2010. The rule, which was adopted as an emergency measure, provides for the filing of returns by September 20, 2010, showing the quantity of such cigarettes and unaffixed stamps as of the June 30, 2010, close of business inventory. A notice explaining the cigarette tax increase and the related tax on inventory as of the close of business on June 30, 2010, along with Form CG-11, Cigarette Floor Tax Return, have been mailed to affected parties and are available on the Department's Web site.