

## REGULATORY IMPACT STATEMENT

### DEPARTMENT OF TAXATION AND FINANCE

1. Statutory authority: Tax Law, sections 171, First, 1134(a)(2) and (5), 1142(1) and (8), 1250 (not subdivided), and Part LL-1 of Chapter 57 of the Laws of 2008. Section 171, First, authorizes the Commissioner of Taxation and Finance to make reasonable rules and regulations, which are consistent with 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 1134(a)(2) of the Tax Law provides that a certificate of authority to collect sales and compensating use taxes may be issued for a specified term, and will be subject to renewal in accordance with rules promulgated by the Commissioner. Section 1134(a)(5) provides that, if the Commissioner considers it necessary for the proper administration of the sales and use taxes, the Commissioner may require every person holding a certificate of authority to surrender the current certificate and to file a certificate of registration (application) for a new certificate of authority not more than once every three years. Part LL-1 of Chapter 57 of the Laws of 2008 directs the Commissioner to conduct such a re-registration program, which should be completed by March 31, 2012, and to collect a \$50 application fee from all persons required to file a new certificate of registration pursuant to this program except annual filers. Sections 1142(1) and (8) of Article 28 and section 1250 of Article 29 of the Tax Law provide for the adoption of rules and regulations that are appropriate to carry out and jointly administer the New York State and local sales and use taxes imposed by and pursuant to the authority of these Articles.

2. Legislative objectives: This rule is being proposed pursuant to this statutory authority to re-examine the existing policies of the Department of Taxation and Finance with respect to sales tax re-registration, and to prescribe a rule that will enable the Department to better administer and ensure compliance with the provisions contained in Articles 28 and 29 and in Part LL-1 of Chapter 57 of the Laws of 2008. The re-registration

program directed by Part LL-1 will enable the Department to update taxpayer information, delete obsolete registrations, and collect past-due taxes.

3. Needs and benefits: Under existing regulations, show and entertainment vendors, i.e., vendors at flea markets, craft shows, and the like, are issued special certificates of authority that are valid for only one calendar year. These certificates are automatically reissued by the Department on an annual basis provided there are no sales tax delinquencies in existence for the vendor at that time. The Department plans to replace this special *Certificate of Authority for Show and Entertainment Vendors* and its specified term with the existing standard *Certificate of Authority* that has no specified term, so that show and entertainment vendors will instead, for purposes of reissuing their certificates, be folded into any sales tax re-registration program the Department may conduct. This rule is a necessary part of this plan to streamline the re-registration process in that it allows the Department to eliminate the special certificate of authority with its specified annual term and to discontinue the practice of automatically reissuing annual certificates of authority to show and entertainment vendors. Rather, the rule allows the Department to conform the treatment of show and entertainment vendors with all other certificate of authority holders for purposes of reissuing their certificates, and the rule is in harmony with Part LL-1 of Chapter 57 of the Laws of 2008 and its directed (and impending) re-registration program. By conforming the process by which a show or entertainment vendor's certificate of authority will be issued, the rule is beneficial to both the regulated parties and the Department.

This uniform treatment of all certificate of authority holders will result in some corollary benefits to both the Department and the regulated parties. The rule facilitates the Department's effort, also in harmony with Part LL-1, to have the most accurate information on file for its registrants. The rule will assist the Department in obtaining updated show and entertainment vendor information, deleting their obsolete registrations, and collecting outstanding tax liabilities from them as part of any sales tax re-registration program. In this respect it is expected that tax compliance for show and entertainment vendors will improve because this group of vendors

will now, like all other holders of certificates of authority and as part of any re-registration program, be required to update their Department records with current and reliable information and be subject to a clearance check of all outstanding liabilities/assessments. In order to obtain a new certificate of authority, show and entertainment vendors will now have to pay, arrange for payment of, or otherwise dispose of to the satisfaction of the Department, any unpaid liabilities that are existing grounds, under section 1134(a)(4) of the Tax Law, for refusing to issue the certificate of authority. By leveling the playing field in this manner all other holders of certificates of authority benefit as well.

The rule is also beneficial in that it contains other clarifying, technical, and conforming amendments. It conforms to the re-registration fee imposed by Part LL-1 of Chapter 57 of the Laws of 2008. References to the specific “certificate of authority for show vendors” are removed and information related to the filing of certificates of registration is corrected. The rule amends language to provide clearer guidance on associated, consolidated, or combined certificates of authority with regard to re-registration and thereby removes any ambiguity that may exist on the part of holders of such certificates in these situations. By modifying the term “mailed” to the more general term “issued,” the rule provides flexibility for the utilization of more modern and cost-effective means of communication between certificate holders and the Department with regard to the sales tax re-registration process. For example, the Department intends to make the new certificate of registration (application) available on its website for convenient access.

Lastly, the rule will benefit the Department by eliminating the two costly processes of automatically reissuing certificates of authority to show and entertainment vendors on an annual basis and of verifying there are no existing delinquencies, i.e., following up on transient show and entertainment vendors who may no longer be involved in taxable selling activities.

4. Costs: (a) Costs to regulated parties: The regulated parties affected by this rule are approximately 40,000 show/entertainment vendors. There will be no costs to these regulated parties for the implementation of

and continuing compliance with this rule. Further, the rule accommodates the utilization of more modern and cost-effective means of communication between these vendors (and other holders of certificates of authority) and the Department with regard to the sales tax re-registration process. However, it is noted that there will be administrative costs associated with the requirements of the re-registration program that the Department will conduct as directed by Part LL-1 of Chapter 57 of the Laws of 2008, such as the completion and submission of new certificates of registration and the associated fee required by Part LL-1.

(b) Costs to the state and its local governments including this agency.

The rule itself will have no revenue impact on New York State or its local governments. The re-registration process directed by Part LL-1 of Chapter 57 of the Laws of 2008 will have a revenue impact, but that cannot be attributed to this rule. Implementation of the rule will result in personal service costs of \$11,100 to this agency for coding, analysis, and testing. However, the agency will save an estimated \$14,000 in annual printing and postage costs by eliminating the automatic annual reissuance of the special certificates of authority to show and entertainment vendors. The rule will result in further cost savings to the Department as it provides for the utilization of more modern means of communication with taxpayers regarding the sales tax re-registration process.

(c) Information and methodology. This analysis is based on discussions among personnel from the Department's Office of Tax Policy Analysis, Management Analysis and Project Services Bureau, Office of Budget and Management Analysis, Office of Counsel, Taxpayer Guidance Division, and Office of Processing and Taxpayer Services.

5. Local government mandates: This rule imposes no mandates upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork: There is no paperwork which will be required as a result of this rule. Moreover, the rule provides a transitional provision that allows show and entertainment vendors whose certificates of authority

expire on December 31, 2008, to automatically receive from the Department a new certificate of authority, effective January 1, 2009, provided that the vendor has timely filed tax returns and paid the applicable tax due. However, it is noted that these vendors will have to file a new certificate of registration in conjunction with the re-registration program that the Department will conduct as directed by Part LL-1 of Chapter 57 of the Laws of 2008. That is, upon notification by the Department of the pending expiration of their certificates of authority, show and entertainment vendors will have to complete and file, either by mail or online, the new certificate of registration (application) and be approved in order to have their new certificates of authority issued prior to expiration of the old certificates.

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

8. Alternatives: The alternative to this rule is for the Department to keep in place its current policy of annually reissuing certificates of authority to show and entertainment vendors. This is not a practical option, however, in light of the recent statutory changes that require the Department to conduct a re-registration program for all holders of certificates of authority. While the existing annual process for show and entertainment vendors could operate concurrently with the requirements of Part LL-1 of Chapter 57 of the Laws of 2008, show and entertainment vendors would unnecessarily be subjected to the duplicative processes of annual reissuance and global re-registration. Therefore, by establishing only one process by which a show or entertainment vendor's certificate of authority will be issued, the rule is beneficial to both the regulated parties and the Department.

The Department also considered the alternative of discontinuing the automatic reissuance of show/entertainment vendor certificates of authority that expire on December 31, 2008, but rejected this idea in order to allow these vendors ample time to become familiar with the provisions of the new rule. As provided in

the rule, holders of certificates of authority will be notified individually of the re-registration requirements. The Department also intends to issue additional guidance as necessary.

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. The rule includes a transitional provision that will allow show and entertainment vendors whose existing certificates of authority expire on December 31, 2008, to receive new certificates that will be effective January 1, 2009, under the Department's current policy of automatic reissuance (provided there are no sales tax delinquencies in existence). Therefore, there is no time period necessary for the regulated parties to achieve compliance with the rule.