

## REGULATORY IMPACT STATEMENT

### DEPARTMENT OF TAXATION AND FINANCE

1. Statutory authority: Tax Law, sections 171, First; 1101(b)(19) and (20); 1105(c)(3)(vi) and (5)(iii); 1115(a)(6), (15), and (16); 1115(c)(2); 1142(1) and (8); and 1250 (not subdivided). Section 171, First of this statutory authority provides for 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. Chapters 407 of the Laws of 1999 and Chapters 63 and 472 of the Laws of 2000 amended (or added) sections 1101(b)(19) and (20); 1105(c)(3)(vi) and (5)(iii); 1115(a)(6), (15), and (16); and 1115(c)(2) of the Tax Law with regard to farming and commercial horse boarding as explained below. Sections 1142(1) and (8) of Article 28 and section 1250 of Article 29 of the Tax Law also 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 compensating use taxes imposed by and pursuant to the authority of such Articles.

2. Legislative objectives: The rule is being proposed pursuant to such authority and in accordance with the legislative objectives that the Commissioner equitably administer the provisions of the Tax Law and take judicious regulatory action when warranted. Chapter 407 (Part Y) of the Laws of 1999 and Chapters 63 (Part B) and 472 (section 31) of the Laws of 2000 significantly expanded the exemption from New York State and local sales and compensating use taxes applicable to farm production and provided a parallel exemption for commercial horse boarding operations in this state. For farmers, commercial horse boarding operators, and retailers alike, the

legislation clarified and simplified the applicable exemptions from tax. This rule helps implement the legislation.

3. Needs and benefits: The purpose of this rule is to correct section 528.7 (“Farming”) and, in part, section 528.22 (“Fuel, gas, electricity, refrigeration and steam and like services used in production”) of the sales and compensating use tax regulations to reflect current Tax Law as it pertains to farming and commercial horse boarding operations. Pursuant to section 207 of the State Administrative Procedure Act, the Department of Taxation and Finance is required every five years to review all of its regulatory amendments to 20 NYCRR that were adopted on or after January 1, 1997. In 1997, the Commissioner adopted amendments to section 528.7 of the regulations providing that certain personal protective equipment purchased for use directly and predominantly in farm production was exempt from tax. The amendments also extended the farming exemption to materials used in silo foundations where the materials became integral component parts of the foundations. Because Chapter 407 of the Laws of 1999 and Chapters 63 and 472 of the Laws of 2000 substantially broadened the farming exemption (Tax Law, section 1115[a][6] and related provisions), the prior amendments are now obsolete and cannot be continued without modification; thus, necessitating this rule. Prior to the law changes, tangible personal property had to be used directly and predominantly in farm production in order to be exempt from tax, and certain property that was incorporated in buildings or structures was excluded from the tax exemption – consequently requiring the interpretive amendments in 1997. Current law does not have the “directly” or building/structure limitations. Accordingly, the rule does not affect the exempt status of the property previously addressed since the expanded statutory exemption now includes such properties. This rule renews the subject regulations by deleting dated information and by incorporating in the regulations the legislative objectives of recent amendments to the Tax Law. The rule consolidates matters relating to farming and commercial horse boarding operations in section 528.7 of the

regulations by relocating applicable utility provisions from section 528.22. The rule also makes technical and editorial changes throughout.

4. Costs: It is estimated that because the rule merely brings obsolete provisions of the regulations into conformity with existing law, there are no costs to regulated parties associated with the implementation of and continued compliance with this rule. Nor are there any costs to this agency, New York State, or its local governments for the implementation and continued administration of the rule. This analysis is based upon discussions among personnel from the Department's Office of Counsel, Office of Tax Policy Analysis, Fiscal Services Bureau, and Client Support 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: The rule imposes no reporting requirements, forms, or other paperwork upon regulated parties beyond that required by law.

7. Duplication: There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule. This rule is specific to the exemption from State and local sales and compensating use taxes for farming and commercial horse boarding, as prescribed in the Tax Law. It is noted that the term "commercial horse boarding operation" as defined in section 1101(b)(20) of the Tax Law has the same meaning as such term is defined in section 301(13) of the New York State Agriculture and Markets Law.

8. Alternatives: No significant alternatives to the rule were considered by this Department because the rule simply reflects current statutory provisions for which there are no discretions. If the Department did not adopt the rule, the regulations would be obsolete and conflict with the Tax Law.

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

10. Compliance schedule: No time is needed in order for regulated parties to comply with this rule. The rule will take effect on the date that the Notice of Adoption is published in the State Register and imposes no compliance requirements beyond those required by law.