

SUBSTANCE OF THE PROPOSED RULE

DEPARTMENT OF TAXATION AND FINANCE

The rule amends the Communications of the Division of Taxation of the Department of Taxation and Finance Regulations, as published in Chapter VI, and the Sales and Use Taxes Regulations, as published in Subchapter A of Chapter IV of Title 20 NYCRR, in conjunction with the implementation of recent changes in policy concerning communications of the Division of Taxation of the Department of Taxation and Finance (“department”). It recognizes alternative methods of disseminating communications of the division, repeals outdated information, provides new rules relating to advisory opinions, and makes other clarifying and technical amendments.

Section 1 makes technical updates to the sales and use taxes regulations, regarding department communications.

Sections 2 and 3 amend section 2375.1 to reference the department’s Web site as a method of communicating tax policy and delete obsolete statutory references.

Sections 4 and 5 amend section 2375.3. Section 4 deletes a reference to opinions of counsel. Section 5 clarifies that the conclusions of a declaratory ruling could be affected by the Tax Appeals Tribunal but not by a nonprecedential determination by an Administrative Law Judge in the Division of Tax Appeals.

Section 6 repeals section 2375.4, *Opinions of counsel*. The Division of Taxation provides numerous forms of advice. Opinions of counsel are discretionary and intended to interpret and apply the Tax Law to situations of wide applicability. They are similar in many respects to technical memoranda (TSB-Ms), and have ordinarily been issued as TSB-Ms. Discontinuing formal Opinions of Counsel will avoid unnecessary duplication.

Section 7 amends section 2375.5 to clarify that advisory opinions are based on the law and regulations as they apply to specific sets of facts as of the date the opinion is issued or for the specific time period at issue in the opinion.

Sections 8, 10, 11, 12, and 13 amend sections 2375.6, 2375.8, 2375.9, 2375.10 and 2375.11, respectively, to eliminate references to the division disseminating technical memoranda, forms and instructions, and publications and notices by mail. The division may disseminate the documents by alternative methods, such as the Internet and electronic mail. In addition, section 8 deletes reference to opinions of counsel and clarifies the force and effect of technical memoranda. Section 11 provides for online tax information and section 13 adds reference to communication by electronic mail. These sections also make other clarifying and technical amendments.

Section 9 repeals section 2375.7, *Tribunal and judicial decision reprints (TSB-D's)*, because the department no longer reprints the full text of Tax Appeals Tribunal decisions and significant court decisions. However, these decisions are available on the New York State Division of Tax Appeals Web site. Section 9 also adds a new section 2375.7 to provide for a new document the division is publishing, *New York tax guidances (NYT-G's)*. Tax guidances consist of redacted versions of selected letters and memoranda and responses to withdrawn petitions for advisory opinion.

Section 14 amends section 2376.1 regarding advisory opinions. It provides that advisory opinions will not be issued to anyone on behalf of an unidentified or hypothetical person or entity. In addition, advisory opinions will not be issued if a statutory notice has been issued about the matter. An advisory opinion may be issued when the question relates to a matter pending before the Bureau of Conciliation and Mediation Services, but only when all parties to the conciliation conference consent. This section deletes an obsolete reference to the Director of the Taxpayer Services Division and provides that advisory opinions are issued by a person to whom such authority is delegated by the commissioner. It deletes reference to an opinion of counsel, eliminates

reference to obsolete taxes, and adds reference to new programs administered by the commissioner. Section 2376.1 is amended regarding the publication of certain petitions that have been withdrawn. Finally, a new paragraph is added to allow a petitioner to reserve the right to apply for the department's Voluntary Disclosure and Compliance program when submitting a petition, with respect to the subject of the advisory opinion.

Sections 15, 16 and 17 amend section 2376.2. Section 15 allows the petition for advisory opinion to be submitted electronically. Sections 15 and 17 delete references to an opinion of counsel. Section 16 broadens who may file a petition on behalf of another and also deletes an obsolete address.

Section 18 amends section 2376.3 to provide a definitive time frame for a petitioner to provide requested information. It also clarifies that Audit Division's initial review of the petitioner's request for advisory opinion relates only to the facts contained in the request, which reflects current policy. The time frame has been extended for a petitioner's response to a notice from the Audit Division stating its disagreement to any facts specified in the petition.

Section 19 amends section 2376.4 to clarify that an advisory opinion is limited to the precedential material in effect as of the date the opinion is issued and may be affected by subsequent changes. It also deletes an obsolete reference.

Section 20 amends section 2376.5. Section 20 eliminates mailing requirements, and allows the department to use alternative methods to issue advisory opinions and/or contact the petitioner. It provides that all identifying information will be redacted when an advisory opinion is published and that published advisory opinions are available from the department upon request. They are also posted on the department's Web site.

Finally, section 21 repeals subdivision (d) of section 2376.5, as these documents are available to the public and do not need to be requested through the records access officer.