

STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

SUBSTANCE OF THE EMERGENCY RULE

This rule amends the Cigarette Tax regulations and the Cigarette Marketing Standards regulations, as published in Title 20 NYCRR, in response to legislative changes enacted on January 25, 2002, as Chapter 1 of the Laws of 2002.

Among its provisions, Chapter 1 amended Article 20 of the Tax Law to increase the excise tax on cigarettes from 55½ cents for each 10 cigarettes or fraction thereof to 75 cents for each 10 cigarettes or fraction thereof ("i.e.", from \$1.11 per pack to \$1.50 per pack of 20 cigarettes), effective April 3, 2002. Additionally, as a result of its amendment of the rates in section 471 of the Tax Law Chapter 1 imposes a floor tax on cigarettes possessed in New York State for sale on April 2, 2002. The purpose of these amendments is to make necessary regulatory changes to reflect these statutory provisions. In addition, these amendments also reflect the change in the amount of tax payment represented by the tax stamps in the schedule of commissions allowable to cigarette agents, and update the calculation of the basic cost of cigarettes to more realistically reflect such cost based upon the price of cigarettes in the current market.

Sections 1, 2, 3 and 6 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.

Sections 4 and 5 of the rule amend 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.

Section 7 of the rule amends section 79.2 of the regulations to reflect the provisions of the floor tax imposed on all cigarettes and unaffixed cigarette tax stamps in the inventories of any agent, wholesale dealer or retail dealer as of April 2, 2002. For purposes of taking the required April 2, 2002 inventories, the rule allows dealers that operate certain 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 such floor tax will be reported and paid. Pursuant to the statutory provisions, the floor tax is allowed to be paid in two installments and the rule provides that a taxpayer's first installment must be at least 25% of the tax due, but cannot be less than \$200. The first installment is due no later than June 20, 2002 and the remaining balance of tax is due no later than October 21, 2002. (Statutorily, the second installment is due on October 20, 2002, which is a Sunday. Section 2399.3 of the Procedural Regulations contained in Chapter IX of Title 20 NYCRR provides that a filing will be considered timely if performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday, i.e. October 21, 2002.)

Section 8 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 and also amends such computation to make such basic cost more realistic, based upon the price of cigarettes in the current market.

Sections 9 through 12 of the rule make technical amendments to sections 82.2, 82.3, 82.4 and 82.5 of the Cigarette Marketing Standards regulations to reflect the change to the basic cost of cigarettes made by section 8 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.

Finally, section 13 of the rule provides that the rule shall take effect on April 3, 2002; however, section 7 of the rule concerning the additional cigarette tax on inventories shall take effect on the date the Notice of Emergency Adoption and Proposal is filed with the Department of State.