

STATEMENT IN LIEU OF A REGULATORY FLEXIBILITY ANALYSIS FOR
SMALL BUSINESSES AND LOCAL GOVERNMENTS
DEPARTMENT OF TAXATION AND FINANCE

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this rule because it will not impose any adverse economic impact or any additional reporting, recordkeeping, or other compliance requirement on small businesses or local governments.

The purpose of the rule is to add a new Part 9 to 20 NYCRR, to implement section 209-B of the Tax Law, as amended by Section 7 of Part A of Chapter 59 of the Laws of 2014. Section 209-B, as amended, generally imposes a tax surcharge on every corporation subject to section 209 of the Tax Law, other than a New York S corporation, for the privilege of exercising the corporation's corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in a corporate or organized capacity, or of maintaining an office, or of deriving receipts from activity in the metropolitan commuter transportation district, for all or any part of the corporation's taxable year.

The Commissioner is required, pursuant to section 209-B(1)(f) of the Tax Law, to adjust the rate of the metropolitan transportation business tax surcharge for taxable years beginning on or after January 1, 2016. The rate is to be adjusted as necessary to ensure that the receipts attributable to the surcharge will meet and not exceed the financial projections for state fiscal year 2016-2017, as reflected in the enacted budget for that fiscal year.

Part 9 complies with the mandate of section 209-B(1)(f), setting forth the rate for taxable years beginning on or after January 1, 2016. The previously established statutory rate was 25.6 percent of the tax imposed under section 209 of the Tax Law. As required by section 209-B(1)(f), the commissioner has computed the metropolitan transportation business tax surcharge, using the state fiscal year 2016-2017 fiscal projections,

at the rate of 28 percent of the tax imposed under section 209 of the Tax Law for taxable years beginning on or after January 1, 2016 and before January 1, 2017.

Part 9 also implements section 209-B(1)(e) of the Tax Law, which requires the Commissioner to adjust the thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district for purposes of imposing the metropolitan transportation business tax surcharge, after reviewing, at the end of each year, the cumulative percentage change in the consumer price index and adjusting such receipts thresholds if the consumer price index has changed by 10 percent or more since January 1, 2015 or since the date that the thresholds were last adjusted by the Commissioner.

The thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district for purposes of imposing the metropolitan transportation business tax surcharge will not be changed beginning on or after January 1, 2016, but will remain the same as set forth in section 209-B(1) of the Tax Law, since the Commissioner has reviewed the cumulative percentage change in the consumer price index, under section 209-B(1)(e) of the Tax Law, and found that the consumer price index has not changed by 10 percent or more since January 1, 2015. The thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district for purposes of imposing the metropolitan transportation business tax surcharge will remain the same as set forth in section 209-B(1) of the Tax Law until such time as the Commissioner next reviews the cumulative percentage change in the consumer price index and adjusts such receipts thresholds.