

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. Pursuant to Tax Law section 631(c), if a nonresident carries on a business, trade, profession or occupation partly within and partly without this state, as determined under regulations of the Department of Taxation and Finance, the items of income, gain, loss and deduction derived from or connected with New York sources shall be determined by apportionment and allocation under such regulations. Tax Law section 1332(a) and section 15-108(a) of the Code of the City of Yonkers provide that the City of Yonkers income tax surcharge shall be administered and collected by the Commissioner in the same manner as the tax imposed by Tax Law Article 22. Section 15-118 of the Code of the City of Yonkers also requires apportionment and allocation of income earned within and without the City. This rule amends 20 NYCRR 132.15(d) and 262.2(b)(3)(i)(a), (b) and (c) to clarify that tangible personal property rented to the taxpayer is to be included in the computation of the property percentage.

For apportionment purposes, the term property typically includes real and tangible personal property owned or rented that is used in the production of income that is to be apportioned. The current regulations explicitly discuss the computation of the property factor with regard to rented real property, but are silent on the treatment of rented tangible personal property. Because of this omission, there could potentially be some confusion as to the treatment of rented tangible personal property. The purpose of this rule is to avoid such confusion.