

REGULATORY IMPACT STATEMENT

DEPARTMENT OF TAXATION AND FINANCE

1. Statutory authority: Tax Law, sections 171, subdivision First; 631(c); 697(a), and 1332, and sections 15-108(a) and 15-118 of the Code of the City of Yonkers. Section 171, subdivision First authorizes the Commissioner to make reasonable rules and regulations that may be necessary for the exercise of the Commissioner's powers and performance of the Commissioner's duties. Section 697(a) authorizes the Commissioner to adopt regulations relating specifically to the personal income tax. 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. 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. Section 15-118 of the Code of the City of Yonkers also requires allocation of income earned within and without the City of Yonkers.

2. Legislative objectives: The statutory scheme for taxation of nonresident income derived from a business carried on partly within and partly without the state requires apportionment and allocation. This rule would amend 20 NYCRR 132.15 (d) to clarify that both real and tangible personal property rented to the taxpayer are to be included in the property factor for apportionment and allocation purposes.

3. Needs and benefits: The purpose of these amendments is to clarify that the property percentage includes tangible personal property rented to the taxpayer, when apportioning and allocating income from a business carried on partly within and partly without New York State. The current regulation explicitly

discusses 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.

4. Costs:

(a) Costs to regulated parties: The rule does not impose any new compliance costs on the regulated parties; the proposed amendments reflect a clarification of existing regulation regarding the application of the property percentage provision with regard to rented tangible personal property. Pursuant to section 631(c) of the Tax Law, items of income, gain, loss and deduction derived from or connected with New York sources are to be determined by apportionment and allocation under regulations of the Commissioner. These amendments clarify the treatment of rented tangible personal property for purposes of apportionment and allocation under section 631(c). The amendments will not produce additional costs to the regulated parties in terms of additional capital costs or additional annual costs of complying with these amendments as defined by the State Administrative Procedures Act. It is further anticipated that there will be no impact on jobs or employment opportunities for residents of this state. There is likely no variation in such costs for public or private interests in rural areas.

(b) Costs to the agency and to the State and local governments: It is estimated that the implementation and continued administration of this rule will not impose any compliance costs upon this agency, New York State or its local governments. The rule merely clarifies existing policy of the Department.

(c) Information and methodology: This analysis is based on a review of the rule, and on discussions among personnel from the Department's Taxpayer Guidance Division, Audit Division, Office of Counsel, Office of Tax Policy Analysis, Office of Budget and Management Analysis, and the City of Yonkers.

5. Local government mandates: This rule imposes no mandates upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork: This rule imposes no new reporting requirements, forms, or other paperwork upon regulated parties.

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.

8. Alternatives: The Department considered various alternatives, including inaction, but determined that the proposed clarifying rule is the best vehicle to avoid confusion regarding the treatment of rented real property in calculating the property factor for apportionment purposes.

9. Federal standards: This rule does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: These amendments will take effect when the Notice of Adoption is published in the State Register, and apply to taxable years ending on or after December 31, 2016.