

STATEMENT OF REASONED JUSTIFICATION FOR MODIFICATION OF THE RULE

DEPARTMENT OF TAXATION AND FINANCE

The Department of Taxation and Finance submitted for publication in the Rule Review section of the January 7, 2009, issue of the *State Register* summaries of rules that were adopted by the Commissioner of Taxation and Finance in 1999 and 2004, and a notice of the department's intent to review such rules pursuant to section 207 of the State Administrative Procedure Act. On December 30, 2008, this information was also posted on the department's web site (<http://www.tax.state.ny.us/rulemaker/regulations/fiveyearrev.htm>). Comments from the public concerning the continuation or modification of these rules were invited until February 23, 2009.

No public comments were received by the department concerning the rule review of the 2004 amendments to Parts 70, 72, 73, 74, 78, 82 and 85 of the Cigarette Tax regulations and the Cigarette Marketing Standards regulations, as published in Subchapter I of Chapter I of Title 20 NYCRR. The 2004 amendments required a licensed wholesale dealer of cigarettes that also sells cigarettes at retail to be registered as a retail dealer of cigarettes and display its certificate of registration as a retail dealer at each retail location. The amendments also reflected other statutory changes. The 2004 amendments were adopted by the Commissioner on January 22, 2004, and published in the *State Register* on February 11, 2004, (I.D. # TAF-45-03-00004-A).

As a result of its 2009 review, the department determined that one of the provisions addressed in the 2004 amendments was dated and could not be continued without modification. Section 481.1(b) of the Tax Law provided for penalties for unstamped or unlawfully stamped packages of cigarettes. Chapter 604 of the Laws of 2008 amended section 481.1(b) to add penalties for unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions. Accordingly, section 78.4 of the rule is being updated to reflect the statutory changes.

It should be noted that section 73.2 of the Cigarette Tax Regulations was repealed based on statutory changes (see I.D. # TAF-27-09-00010-A) and the remainder of the amendments made in 2004 to this rule are current and are continued without modification.