REGULATORY FLEXIBILITY ANALYSIS FOR

SMALL BUSINESSES AND LOCAL GOVERNMENTS

DEPARTMENT OF TAXATION AND FINANCE

1. Effect of rule: This rule amends Parts 132 and 154 of the personal income tax regulations to comply with a statutory directive. Sections 631(g) and 638(c) of the Tax Law, which were added by Chapter 62 of the Laws of 2006, provide that nonresident and part-year resident taxpayers who received compensation income attributable to stock options, restricted stock or stock appreciation rights and who performed services within New York State during the grant period for the corporation granting such option, stock or right allocate such income to New York according to rules prescribed by the Commissioner. Section 3 of Part N of Chapter 62 directs that such rules be proposed within 180 days of the effective date of the act. This rule provides such method of allocation.

This rule will have no effect on local governments. It also will also have no effect on small businesses. The allocation method in the rule involves some recordkeeping but the rule imposes no reporting requirements, forms, or other paperwork upon regulated parties beyond those required by existing law and regulations. The reporting requirements of the rule are not on small businesses but on certain nonresident employees and officers who work within and without New York State. Some small businesses may have to change the methodology for calculating withholding amounts for some employees and officers in order to meet the requirement that an amount is withheld that is substantially equivalent to the amount of tax due. This rule sets forth an allocation method for which a record of days worked within and without the state is used for individuals who are already keeping this information.

2. Compliance requirements: This rule requires some individuals to continue to maintain records of days worked within and without New York State. The promulgation of this rule will not require small businesses or local governments to submit any new information, forms or other paperwork.

3. Professional services: Many small businesses currently utilize bookkeepers, accountants and professional payroll services in order to comply with existing withholding requirements. This rule will do nothing to encourage or discourage the use of any of such services.

4. Compliance costs: These changes will place no additional burdens on small businesses and local governments. There is also no cost to those individuals affected by the rule for implementation and continued compliance with the rule. See, also, section 4(a) of the Regulatory Impact Statement for this rule.

5. Economic and technological feasibility: This rule does not impose any economic or technological compliance burdens on small businesses or local governments.

6. Minimizing adverse impact: The rule does not adversely impact small businesses or local governments. The regulation does provide some relief to individuals who are impacted with respect to the allocation methods allowed for 2006. In recognition that taxpayers may have relied on a 1995 technical memorandum to compute their estimated tax and/or withholding requirements for 2006, the rule affords taxpayers a choice in this transitional year to use either the new method or the method outlined in the 1995 technical memorandum, so as not to leave taxpayers at a disadvantage.

7. Small business and local government participation: The following organizations were notified that the Department was in the process of developing this rule and were given an opportunity to participate in its development: the New York Conference of Mayors, the Association of Towns of New York State, the New York State Association of Counties, the Office of Local Government and Community Services of the New York State Department of State, the Small Business Council of the New York State Business Council, the National

Federation of Independent Businesses, the Division for Small Business of Empire State Development and the Retail Council of New York State.