

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES

AND LOCAL GOVERNMENTS

DEPARTMENT OF TAXATION AND FINANCE

1. Effect of rule: Approximately 119,500 exempt organizations that have obtained Exempt Organization Certificates from the Department of Taxation and Finance are classified as active. This figure is subject to change daily. Whether all of these organizations are, in fact, currently operating as exempt organizations in New York State cannot be determined. Moreover, of the approximately 119,500 exempt organizations, it cannot be ascertained how many are exempt from tax pursuant to sections 1116(a)(4), (5), or (6) of the Tax Law (*i.e.*, those organizations affected by this rule); however, it is the vast majority. See section 3, “Needs and benefits,” of the Regulatory Impact Statement filed with this rule for a description of the subject exempt organizations. In addition, of the currently active section 1116(a)(4), (5), and (6) exempt organizations, both the number of those that are making taxable sales that are covered either by Part KK-1 of Chapter 57 of the Laws of 2008 (“Part KK-1”) or by this rule and the number of those that constitute “small businesses,” as defined in section 102(8) of the State Administrative Procedure Act, are undeterminable. Accordingly, the effect of the rule on small businesses in distinction from others cannot be determined with any degree of accuracy. The rule affects all section 1116(a)(4), (5), and (6) exempt organizations in the same manner, some of which might be considered small businesses. The rule does not impose any adverse economic impact, compliance requirements, or implementation or administration costs on local governments, which will not be addressed any further in this statement.

2. Compliance requirements: The rule reflects the statutory amendments enacted by Part KK-1 and provides related rules concerning other taxable sales made by section 1116(a)(4), (5), and (6) exempt organizations. As discussed in the Regulatory Impact Statement, every person required to collect sales tax must

register for sales tax purposes, keep records, file returns, remit taxes, and otherwise comply with all of the obligations of a person required to collect sales tax that are imposed under the Tax Law and under the existing regulations. Such persons include small businesses.

3. Professional Services: The rule itself imposes no requirements upon small businesses concerning professional services. However, section 1116(a)(4), (5), and (6) exempt organizations that are also small businesses may, depending upon their own expertise and on the extent of their taxable sales, elect to employ professional services, such as bookkeepers and accountants, in meeting their compliance requirements.

4. Compliance costs: Section 1116(a)(4), (5), and (6) exempt organizations that are also small businesses may incur some of the limited costs to regulated parties that are discussed in detail in the Regulatory Impact Statement. No variations in these costs exist solely because an exempt organization may be a resident in this state, independently owned and operated, and employs 100 or less individuals.

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

6. Minimizing adverse impact: In developing this rule, the department was aware of the need to consider approaches to implement Part KK-1 while minimizing any adverse economic impact on small businesses. However, the legislation requires all section 1116(a)(4), (5), and (6) exempt organizations to collect sales tax on specific taxable sales. Part KK-1 does not distinguish between affected exempt organizations that are small businesses and any other section 1116(a)(4), (5), and (6) exempt organizations. The rule likewise treats all of these exempt organizations in the same manner. Accordingly, different compliance and reporting requirements or timetables unique to small businesses are not practical approaches for this rule. That is not to say that the Tax Law and the existing regulations do not already have provisions that minimize the compliance requirements imposed on persons required to collect tax, including vendors. For example, at their discretion, vendors may keep records electronically and certain vendors may file returns and pay taxes on an annual basis,

rather than monthly or quarterly. In addition, the nature of the rule and the applicable provisions of law do not lend themselves to the use of performance standards nor do they allow for any discretionary exemptions.

7. Small business participation: The following organizations were notified that the department was in the process of developing this rule and were given the opportunity to participate in its development: the Association of Towns of New York State; the Division of Local Government Services of the New York State Department of State; the Division for Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York State Conference of Mayors and Municipal Officials; the Small Business Council of the New York State Business Council; the Retail Council of New York State; the New York State Association of Convenience Stores; the New York State Auctioneers Association, Inc.; the United Way of New York; the Statewide SEFA Council; the National Council of Nonprofit Associations; the Greater New York Hospital Association; the Healthcare Association of New York State; the Medical Society of the State of New York; the New York Health Information Management Association; the New York State School Boards Association; the New York State Parent-Teacher Association; the Nonprofit Coordinating Committee of New York; the Charities Bureau of the New York State Department of Law; the Department of New York Veterans of Foreign Wars; and the American Legion's Department of New York. As part of our outreach, we invited most of these organizations to extend our invitation for input to other exempt organizations that may be affected by this rule. No comments were received concerning the rule.