

REGULATORY IMPACT STATEMENT

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

RURAL AREA FLEXIBILITY ANALYSIS

JOB IMPACT EXEMPTION

DEPARTMENT OF TAXATION AND FINANCE

A revised Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments, Rural Area Flexibility Analysis, and Job Impact Exemption are not required to be submitted because the unsubstantial revisions made to the proposed rule do not affect any of the statements made in these documents.

The rule relates to recently enacted legislation regarding the collection of taxes on cigarettes sold on New York State Indian reservations. As amended by Part D of Chapter 134 of the Laws of 2010, section 471(1) of the Tax Law imposes the tax on cigarettes including all cigarettes sold on an Indian reservation to non-members of the Indian nation or tribe and to non-Indians, and provides for a statutory dual system to be used on and after September 1, 2010, that ensures adequate quantities of stamped but tax-exempt cigarettes are available for purchase by the nation or tribe and its members for their use or consumption based on their probable demand. The rule details requirements for the use of the statutory dual system.

In order to meet the statutory implementation deadline of September 1, 2010, the proposed rule was previously adopted as an emergency measure on June 22, 2010, and provided for the election by an Indian nation or tribe to participate in the Indian tax exemption coupon system for the twelve-month period beginning September 1, 2010, to be made by August 15, 2010. However, various state and federal court challenges by Indian nations or tribes have precluded implementation and enforcement of the statutory and regulatory amendments on September 1, 2010. In light of the uncertainty created by this recent litigation, the proposed

rule has been revised to provide flexibility both now and in the future by authorizing the Department to allow the recognized governing body of an Indian nation or tribe to elect to use the Indian tax exemption coupon system on a date other than the preceding August 15 for the twelve-month period beginning September 1 and ending August 31. In the case of a later election, the Indian tax exemption coupon system would apply with respect to that Indian nation or tribe for the remainder of the twelve-month period beginning September 1, and the amount of coupons provided to the recognized governing body for the first quarter during which the election applies would be reduced to account for the quantity of tax-exempt cigarettes sold to the Indian nation or tribe or a reservation cigarette seller in compliance with the prior approval system during the quarter.

These unsubstantial revisions merely provide more flexibility as to the date by which the election can be made, and there are no modifications to the Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Exemption necessary as a result of the changes.