

REGULATORY IMPACT STATEMENT

DEPARTMENT OF TAXATION AND FINANCE

1. Statutory authority: Tax Law, section 171, subdivision First; section 475 (not subdivided); section 482-a; and section 488. This statutory authority provides for the Commissioner of Taxation and Finance to make reasonable rules and regulations, which are consistent with law, that may be necessary for the exercise of the Commissioner's powers and the performance of the Commissioner's duties under the Tax Law. This authority also provides for the adoption of rules and regulations that are appropriate to carry out and jointly administer the New York State Tax on Cigarettes and Tobacco Products and the Cigarette Marketing Standards imposed by and pursuant to the authority of Articles 20 and 20-A of the Tax Law.

2. Legislative objectives: The rule is being proposed pursuant to such authority and in accordance with the legislative objectives that the Commissioner equitably administer the provisions of the Tax Law and take judicious regulatory actions when such actions are warranted. Specifically, this rule is an exercise of the Commissioner's statutory authority to reexamine the existing policy of the Department of Taxation and Finance and to provide a rule that will prescribe consistent treatment with respect to the retail registration requirement for both wholesale dealers and retail dealers that sell cigarettes at retail.

3. Needs and benefits: The primary purpose of the amendments is to require a licensed wholesale dealer of cigarettes that also sells cigarettes at retail, to register as a retail dealer of cigarettes. This proposal will provide separate authorities for each activity: sales of cigarettes for resale are a wholesale activity and require a wholesale dealer's license; sales of cigarettes to consumers are a retail activity and require a retail dealer's certificate of registration for each separate retail location. As a result, a wholesale dealer that also sells cigarettes at retail will become subject to the appropriate penalties applicable to its retail activity. The Tax Law will be applied consistently to both wholesale dealers that also sell cigarettes at retail and retail dealers of cigarettes.

In addition, this change will support certain provisions of Article 13-F of the Public Health Law. Article 13-F provides that retail dealers of cigarettes and tobacco products that sell such products to minors may have their retail dealer's certificate of registration suspended or revoked. Under our current regulations, wholesale dealers that also sell cigarettes at retail are effectively immune from any suspension or revocation penalty in conjunction with their retail locations' sales of cigarettes to minors. By requiring wholesale dealers that also sell cigarettes at retail locations to register as retail dealers, they will now be subject to the suspension and revocation of their retail dealers' certificate of registration for sales to minors.

4. Costs: It is estimated that the implementation of, and continued compliance with, the rule will impose minimal fiscal costs upon regulated parties and no measurable non-fiscal impact on regulated parties in part, because this is a standard industry practice that most wholesale dealers are already complying with. Any wholesale dealer that sells cigarettes at retail that is not currently complying with this practice will need to register each location, at a cost of \$100 per establishment per year. The application for registration and the annual renewal form require basic address information, the number of retail locations, and the name and address of each retail location.

It is estimated that there is minimal fiscal impact to this Department for the implementation and continued administration of the rule. The Department will incur minimal costs affiliated with processing of the additional application requests and the issuance of the retail certificates. However, these costs will be offset by the revenue collected from the small number of wholesalers who are not currently registered for their retail activities. It is also estimated that the rule will have no fiscal impact on local governments throughout the state.

This analysis is based upon the information and methodologies set forth above and upon discussions among personnel from the Department's Office of Counsel, Office of Tax Policy Analysis, Client Services Division, Transaction and Transfer Tax Bureau, Office of Tax Enforcement, Bureau of Fiscal Management and Technical Services Division.

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

6. Paperwork: The rule imposes minimal paperwork requirements upon regulated parties. It requires every wholesale dealer that is selling cigarettes in New York State at retail to complete an application for registration. In addition, the dealers must complete renewal application forms for each subsequent year. The dealers must list each of their retail locations on the registration and renewal applications.

7. Duplication: These amendments do not duplicate any existing Federal or State requirements.

8. Alternatives: The alternative to the proposed regulation would be to continue to allow a wholesale dealer to display its license as a wholesale dealer at each of its retail locations. This approach, however, as described in Section 3, Needs and Benefits, places the wholesale dealer's license at risk if a violation occurs at a retail location. It would also provide unintended immunity from penalty for sales of cigarettes or tobacco products to minors.

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

10. Compliance schedule: Sections 1, 2, and 3, of this rule require every wholesale dealer engaged in the activity of selling cigarettes in New York State at retail to display a certificate of registration as a retail dealer at each retail location. To obtain a certificate of registration for each retail location, the wholesale dealer must obtain, complete and mail the application for registration along with payment of the proper application fee. The Department, by statute, is allowed ten days after receipt of the application to issue the certificate of registration for each retail location to the wholesale dealer. The wholesale dealer is responsible for providing each of its retail locations with the applicable certificate of registration. It is estimated that 45 days will be a sufficient amount of time to enable the regulated parties to achieve compliance with these requirements. Therefore, the effective date for sections 1, 2, and 3 of the amendments has been modified to allow additional time to accommodate the new

registration requirement. No measurable time is needed in order for regulated parties to comply with the remaining provisions of this rule.