

STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

SUBSTANCE OF THE PROPOSED RULE

This rule amends the Cigarette Tax regulations and the Cigarette Marketing Standards regulations, as published in Title 20 NYCRR. The primary purpose of the proposed amendments is to amend the Cigarette Tax regulations to require a licensed wholesale dealer of cigarettes (wholesale dealer) that also sells cigarettes at retail, to be registered as a retail dealer of cigarettes (retail dealer.)

Currently, the Tax Law provides that a retail dealer is required to display a certificate of registration as a retail dealer at each retail location. However, the existing regulations allow a wholesale dealer to display its license as a wholesale dealer at any of its retail locations, rather than obtaining a separate certificate of registration as a retail dealer for each such retail location. Therefore, a wholesale dealer that violates any provision of Tax Law Articles 20 or 20-A at any of its retail locations is subject to suspension or revocation of its wholesale dealer's license. (Tax Law §§480.1(j) and 480.3)

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.

In addition, several sections of the Cigarette Tax and Cigarette Marketing Standards regulations have been updated to reflect statutory changes.

Section 1 amends section 70.2 to modify the definition of *wholesale dealer* to provide that a wholesale dealer that also sells cigarettes at retail is also required to register as a retail dealer. This section further changes the definition of *retail dealer* to include a wholesale dealer that is engaged in the activity of selling cigarettes at retail.

Sections 2 and 3 amend section 72.1 to remove the reference of a wholesale dealer displaying its wholesale license at retail places of business. A wholesale dealer making retail sales will be required to also register as a retail dealer and display a certificate of registration as a retail dealer at all retail locations.

Sections 4 and 6 amend sections 73.2 and 78.4 to reflect the statutory increase in the amount of civil fines and penalties for various violations.

Section 5 amends section 74.4 to reflect statutory changes that forbid an agent or wholesale dealer from making sales to a retail dealer that is not registered or whose registration has been suspended or revoked.

Section 7 amends section 82.1 to reflect statutory changes that require retail dealer registration.

Sections 8 and 9 amend sections 82.2 and 82.3 respectively, to require a retail dealer to provide a copy of its certificate of registration as a retail dealer rather than a properly completed sales tax resale certificate when making purchases of cigarettes, based on statutory changes regarding retail dealer registration.

Section 10 amends section 85.1 to reflect statutory changes that require retail dealer registration.