

REGULATORY IMPACT STATEMENT

DEPARTMENT OF TAXATION AND FINANCE

1. Statutory authority: Tax Law, sections 171, subd. First; 474(4); and 475 (not subdivided). Section 171, subd. First, provides the Commissioner of Taxation and Finance with the authority to make reasonable rules and regulations that may be necessary for the exercise of his or her powers and duties under the Tax Law. Section 475 provides the same authority as it relates specifically to the administration of the tobacco products excise tax imposed under Article 20 of the Tax Law, and also provides that tobacco products wholesale dealers may be required to file returns at such times and containing such information as may be prescribed. Section 474(4) provides that such wholesale dealers must maintain certain records required by the Commissioner.

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 protect the State's tax revenues. The rule is an exercise of the Commissioner's authority to re-examine the existing policies of the Department of Taxation and Finance with respect to the tobacco products excise tax, and to prescribe a rule that, consistent with the Tax Law, will enable the Department to better ensure compliance with the provisions contained in Article 20 as described below in Section 3 of this statement.

3. Needs and benefits: The rule seeks to remedy various compliance and enforcement issues in the tobacco products excise tax. This tax is based on the wholesale price of the tobacco product and is paid "upstream" by the distributor that imported the product, then added and collected as part of the selling price along the distribution chain, and ultimately included in the retail price. Currently, both tobacco products distributors and retail dealers are required to provide the Department with certain information regarding their purchases and/or sales of tobacco products, but tobacco products wholesale dealers that are not also distributors are not required to report such information. This rule would close the informational reporting gap within the

chain of distribution by requiring tobacco products wholesale dealers that are not also distributors to file new monthly informational returns with the Department detailing their purchases, sales, and prices of tobacco products for the corresponding month. The new return will enable the Department to better track the distribution as well as the wholesale price of tobacco products in New York State. The ability to track product through the distribution chain, as provided by this rule, will better enable the Department to reconcile information about tobacco products ultimately received and sold by retail dealers in an effort to ensure better compliance with the tobacco products excise tax.

4. Costs: (a) Costs to regulated parties. The regulated parties affected by this rule are approximately 140 licensed tobacco products wholesale dealers. There will be no tax liability costs to these regulated parties for the implementation of and continuing compliance with this rule. There will, however, be administrative costs associated with the requirements of the rule including the filing of a new informational return. It is estimated that it will take an affected wholesale dealer one hour and thirty minutes to learn such new requirements, one hour for recordkeeping, and one hour and thirty minutes to complete the new returns, for a total of four hours. Assuming half of the wholesale dealers will prepare the returns themselves at \$15 per hour and half will use an accountant at \$80 per hour, the resulting average cost for each dealer to comply during the first month will be \$47.50 per hour or \$190. After the first month, the cost of learning the new requirements could be reduced to zero for these wholesale dealers, resulting in compliance costs to each of them of \$119 per month in the second month and thereafter.

These estimated administrative costs to the regulated parties were derived using information sources available to the Department such as tax return information and supplier reports, i.e., the new informational return is of similar complexity and captures much of the same information as the existing Distributor of Tobacco Products Tax Return.

(b) Costs to the state and its local governments including this agency. This rule will have no cost in terms of revenue impact on New York State or its local governments. It is anticipated that it will assist in achieving compliance with the tobacco products excise tax. There will be costs to this agency with regard to the implementation and continued administration of the rule. The rule will necessitate the development of the new forms at an estimated cost of \$4,280. The estimated annual cost to print and mail the new returns is \$11,844, which includes personal service costs of \$7,584 and non-personal service costs of \$4,260. Additional costs to the Department for developing a software package to capture data from the new returns, preparing test documents and reviewing test output, managing user support, and entering data on a monthly basis are estimated to be \$36,744 on an annual basis.

(c) Information and methodology. This analysis is based on discussions among personnel from the Department's Office of Tax Policy Analysis, Management Analysis and Project Services Bureau, and the Office of Budget and Management Analysis.

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: Additional reporting and paperwork requirements will be imposed on the regulated parties affected by this rule. These tobacco products wholesale dealers that are not also distributors of tobacco products will be required to file new monthly informational returns detailing their purchases, sales, and prices of tobacco products. The new returns must be filed on or before the twentieth day of each month and must reflect the wholesale dealer's activities for the preceding month. Every return must contain a certification that the information reported on it is true, correct, and complete. Further, wholesale dealers must maintain complete and accurate records to substantiate the information reported on their returns. The rule does not require wholesale dealers that are also distributors of tobacco products to file separate informational returns; they will continue to file returns as established prior to this rule.

7. Duplication: There are no relevant rules or other legal requirements of the Federal or State government that duplicate, overlap, or conflict with this rule.

8. Alternatives: The alternative to the rule is to continue not requiring monthly informational returns be filed with the Department by tobacco products wholesale dealers that are not also distributors. This approach, however, results in a gap in the informational reporting of tobacco products purchases, sales, and prices, as described in Section 3 of this statement. Since it is the intention of the Department to close this gap, no alternatives were examined, as the only way to obtain the necessary information is to require it from these tobacco products wholesale dealers.

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

10. Compliance Schedule: The rule will take effect on the date that the Notice of Adoption is published in the State Register and will apply to monthly reporting periods beginning more than 90 days after such date. The rule will require approximately 140 tobacco products wholesale dealers to file new monthly informational returns with the Department. It is estimated that 90 days will be a sufficient amount of time to enable these regulated parties to achieve compliance with this requirement.