REGULATORY IMPACT STATEMENT

DEPARTMENT OF TAXATION AND FINANCE

1. Statutory authority: Tax Law, sections 171, First; 284-e (not subdivided); 289-f (not subdivided); 301-a(1); 315 (not subdivided); 471-e (not subdivided); 475 (not subdivided); 1112 (not subdivided); 1142(1), (8), (11), and (12); 1210(m); and 1250 (not subdivided). Section 171, First provides general authority for the Commissioner of Taxation and Finance to make reasonable rules and regulations that are consistent with law and that may be necessary for the exercise of the Commissioner's powers and the performance of his duties under the Tax Law. Sections 284-e, 301-a(1), 471-e, 1112, and 1210(m) require the Commissioner to promulgate rules and regulations necessary to implement the collection of excise taxes and State and local sales and compensating use taxes on retail sales made to non-Indians on New York State Indian reservations. The remaining provisions of Law provide authority for rules and regulations that are appropriate to carry out and jointly administer the New York State and local taxes imposed by and pursuant to the authority of Articles 12-A, 13-A, 20, 28, and 29 of the Tax Law.

2. Legislative objectives: The rule is being proposed pursuant to such authority. Moreover, Chapters 62 (Part T3) and 63 (Part Z) of the Laws of 2003 mandate that the Commissioner adopt rules and regulations to effectuate the collection of taxes on retail sales made to non-Indians on Indian reservations in this State . The rule fulfills this legislative objective.

3. Needs and benefits: Chapters 63 (Part T3) and 63 (Part 2) of the Laws of 2003 mandate that the Commissioner adopt rules and regulations to effectuate the collection of taxes on retail sales made to non-Indians on Indian reservations in this State. The adoption of this regulation will satisfy that requirement. The rule will benefit Indian nations and tribes and their members by providing an Indian tax exemption coupon system to ensure

that adequate quantities of tax-free cigarettes, motor fuel, and diesel motor fuel are available to them for official nation or tribal use and for their members' own use or consumption.

This coupon system was developed to respect the sovereignty of the Indian nations and tribes within their reservations. Such sovereignty is protected and preserved by federal law and policies and subject to congressional defeasance. Consistent with such federal law and policies, sales on a qualified reservation to a non-Indian are subject to the taxes.

This rule will benefit off-reservation retailers (e.g., convenience stores and gasoline stations) located near qualified reservations by creating a level playing field for sales to non-Indians.

The rule also fulfills the legislative requirement set forth above by reminding non-Indian consumers of their obligation to report and pay the tobacco products tax on the use of tobacco products that were purchased on or from a qualified reservation. Non-Indian consumers are also reminded of their obligation to report and pay the State and local sales or compensating use tax on purchases of tangible personal property or services on qualified reservations. The rule highlights a new mechanism available to certain purchasers for reporting and paying the sales or use tax; such taxes may be paid on an individual's personal income tax return.

4. Costs: (i) Costs to regulated parties. There are no tax liability costs to regulated parties, including cigarette agents and wholesalers and fuel distributors associated with the implementation of, and continued compliance with this rule. There are also no tax liability costs to the Indian nations and tribes or to their members. The tax liability impact of this rule is borne by the non-Indian consumers of cigarettes, motor fuel, diesel motor fuel and other property and services purchased on or from qualified reservations. This tax liability of non-Indian consumers is a feature of current law and has been for some time. The estimated tax collection impact on non-Indian consumers as a result of the mechanisms set forth in this rule is a $20 million increase in the fiscal year ending 3/31/04 and a $64.5 million increase in the fiscal year ending 3/31/05.

The estimated tax collection impact of this rule was derived using information sources available to the Department of Taxation and Finance such as tax return information, supplier reports, and other secondary sources (e.g., Bureau of the Census, Centers for Disease Control). The Department has no direct knowledge of the volumes or types of products sold on qualified reservations. The estimates also involve behavioral assumptions by Department staff as to likely responses by non-Indian consumers to price increases on qualified reservations (e.g., shifting from reservation to non-reservation markets - both in New York State and out-of-state).

There are, however, administrative costs to regulated parties associated with this rule. The Department will supply the nations and tribes with the coupons described in paragraph 3 of this statement - Needs and benefits. It is anticipated that the nations and tribes will distribute the coupons to reservation cigarette sellers, reservation motor fuel sellers, and reservation diesel motor fuel sellers, as the case may be. It is estimated that the nations and tribes, and such reservation sellers will incur minimal costs with respect to the distribution and safeguarding of the coupons.

Reservation cigarette sellers and nations and tribes will give the coupons to a licensed wholesale dealer to obtain cigarettes affixed with cigarette tax stamps without payment of the cigarette or prepaid sales taxes. (It is estimated that 20 wholesalers make sales that are delivered to Indian reservations.) The wholesaler will file a claim for refund of such taxes. It is estimated that the cost of filing a claim for refund is $320. This cost should decrease as wholesalers become familiar with the coupon system. The frequency of filing refund claims will vary with each wholesaler depending on the volume of such sales. Assuming a monthly filing of refund claims, it is estimated that the maximum total annual recordkeeping cost for all wholesalers is $76,800. These wholesale dealers also will incur a minimal cost to safeguard the coupons. Assuming a .84 % annual interest rate, it is estimated that the total annual financial cost to outlay the associated cigarette and prepaid sales taxes is approximately $8,000 for the wholesalers.

Reservation motor fuel sellers and reservation diesel motor fuel sellers will give coupons to a registered distributor to purchase motor fuel and diesel motor fuel without payment of the excise or prepaid sales taxes. The distributor may file a claim for credit of the taxes on their monthly tax returns or a claim for refund of such taxes. It is anticipated that distributors will choose to claim a credit on their monthly tax returns. However, if a distributor files a claim for refund, it is estimated that the cost of filing such claim is $320; the cost will decrease as distributors become familiar with the coupon system. The filing frequency will vary with each distributor depending on the volume of sales to Indians. It is estimated that the costs of recordkeeping and safeguarding the coupons, and the cost to outlay the excise and prepaid sales taxes, where applicable, is insignificant since it is anticipated that most distributors will claim credits on their tax returns.

The estimated administrative costs to the regulated parties were derived using information sources available to the Department such as tax return information and supplier reports. The Department has no direct knowledge of the volumes or types of products sold on qualified reservations.

(ii) Costs to the State and its local governments including this agency:

It is anticipated that New York State and its local governments that impose the excise and state and local sales and use taxes will experience increases in revenues associated with the implementation of and continued administration of this rule that are estimated to be $18 million and $2 million, respectively, in the fiscal year ending 3/31/04, and $57 million and $7.5 million, respectively, in the fiscal year ending 3/31/05.

See (i) of this paragraph for the methodology used to estimate these increases in revenue.

Also, there will be costs to the Department for the implementation and continued administration of this rule. It is estimated that the total cost to the Department in the fiscal year ending 3/31/04 will be $67,400. This includes the purchase of the coupons, mailing costs for the coupons, personnel service costs, costs for revisions to existing

tax forms, and the printing and mailing costs for the documents needed to notify the regulated parties of the mechanisms set forth in this rule. Such costs are $19,000, $400, $41,000, $2,000, and $5,000, respectively.
For subsequent fiscal years, the estimated annual cost to the Department for administering this rule is $112,800, which is comprised of $37,000 for Indian tax exemption coupons, $800 in mailing costs for the coupons, and $75,000 for personnel services.

5. Local government mandates: None.

6. Paperwork: This rule will impose additional reporting and paperwork requirements on regulated parties. The Indian nations and tribes, and reservation retail sellers will need to track and safeguard the Indian tax exemption coupons. In the event the coupons that are issued do not meet the demands of a nation and tribes or their members, such nations and tribes must submit evidence to obtain additional coupons. These activities may require additional, but minimal, reporting and paperwork.
Cigarette agents and wholesalers, and fuel distributors will either claim credits on their tax returns or file refund claims for the prepaid taxes on cigarettes and fuel purchased with Indian tax exemption coupons. They too will need to track and safeguard the coupons - an activity likely to require additional but minimal paperwork.

7. Duplication: This rule does not result in duplication of other rules or procedures.

8. Alternatives: The proposal of a rule similar to Indian regulations previously enacted and repealed was considered but rejected. The prior regulations required retail businesses located on a qualified reservation to register with the Department in order to make sales to qualified Indians without collecting the excise and sales taxes. It also included substantial recordkeeping requirements for such businesses. This alternative was not selected because it is considered to be unnecessarily cumbersome for the Indian nations and tribes.

9. Federal standards: This rule does not exceed any minimum standards of the federal government.

10. Compliance schedule: This rule applies to tax periods commencing on or after December 1, 2003, as mandated by Chapters 62 (Part T3) and 63 (Part Z) of the Laws of 2003. Indian tax exemption coupons are to be provided to the Indian nations and tribes on a quarterly basis. The quantity of coupons is based upon the probable demand for cigarettes, motor fuel, and diesel motor fuel, as the case may be, of the qualified Indians on such nations' or tribes' qualified reservation plus the amount needed for official nation or tribal use. The coupons for the quarter beginning December 1, 2003, will be provided to the nations and tribes immediately following the adoption of this rule. This will allow the nations and tribes a sufficient amount of time to distribute the coupons to the reservation sellers located on their qualified reservations so that such sellers may purchase tax-free cigarettes, motor fuel, and diesel motor for resale to the Indian nations and tribes and their members. Indian tax exemption coupons for subsequent quarters will be provided to the nations or tribes about 14 days prior to the first day of the quarter.