

REGULATORY IMPACT STATEMENT

DEPARTMENT OF TAXATION AND FINANCE

1. Statutory authority: Tax Law, section 171, subdivision First, generally authorizes the Commissioner of Taxation and Finance to promulgate regulations; section 671(a)(1) provides that the method of determining the amounts of New York State personal income tax to be withheld will be prescribed by regulations promulgated by the Commissioner; section 697(a) provides the authority for the Commissioner to make such rules and regulations as are necessary to enforce the personal income tax; section 1329(a) of the Tax Law and section 15-105 of the Code of the City of Yonkers provide that the City of Yonkers income tax surcharge shall be withheld in the same manner and form as that required for State income tax; section 1332(a) of the Tax Law and section 15-108(a) of the Code of the City of Yonkers provide that the income tax surcharge shall be administered and collected by the Commissioner in the same manner as the tax imposed by Article 22 of the Tax Law. Section 1321 authorizes the City of Yonkers to adopt and amend local laws imposing a city income tax surcharge to be administered, collected and distributed by the Commissioner. Section 5 of Part Z-1 of Chapter 57 of the Laws of 2009 requires the Commissioner to adopt rules to implement changes in the withholding tax tables and methods relating to the income tax rate changes made by Part Z-1. City of Yonkers Local Law No. 3-1011 amended section 15-111 of the Code of the City of Yonkers to increase the city income tax surcharge from 10 to 15 percent of net state income tax. Chapter 255 of the Laws of 2011 extended the authority contained in Section 1321 to taxable years beginning before 2014. City of Yonkers Local Law No. 9-2011 extended the City of Yonkers resident income tax surcharge and its non-resident earnings tax to taxable years ending on or before December 31, 2013.

2. Legislative objective: New Appendixes 10 and 10-A of Title 20 NYCRR contain the revised New York State and City of Yonkers withholding tables and other methods applicable to wages and other compensation paid on or after January 1, 2012. The amendments implement changes necessitated by Chapter

57 of the Laws of 2009 for tax years beginning after 2011, reflecting the return to the highest personal income tax rate of 6.85 per cent in effect for tax years beginning before 2009. Specifically, the amendments reflect the expiration of the revised tax tables and the tax table benefits recapture provided for in Chapter 57 of the Laws of 2009. Because the income tax rate changes effected by Chapter 57 related to taxpayers with incomes over certain amounts, the wage bracket method (Method I) tables were not affected, and remain unchanged by the amendments. New Appendix 10-A also reflects the increase in the City of Yonkers income tax surcharge rate from 10 to 15 percent of net state income tax, pursuant to amendments to section 15-111 of the Code of the City of Yonkers made by Local Law No. 3-2011 of the City of Yonkers, which was enacted under the authority of Section 1321 of the Tax Law. Specifically, the amendments to City of Yonkers withholding tax tables reflect the implementation of the 15 percent surcharge rate over a twelve-month period, rather than the shorter implementation period required for tax year 2011. Amendments to provisions regarding withholding on supplemental wages are also made to reflect the new rates of withholding. The amendments also reflect minor technical corrections and cosmetic changes to Appendixes 10 and 10-A.

3. Needs and benefits: This rule sets forth amendments to the New York State and City of Yonkers withholding tables and other methods, applicable to wages and other compensation paid on or after January 1, 2012, reflecting the revision of New York State personal income tax rates contained in Chapter 57 of the Laws of 2009, and implementing the new City of Yonkers income tax surcharge rate pursuant to section 15-111 of the Code of the City of Yonkers as amended by City of Yonkers Local Law 3-2011 over a twelve-month period, rather than over the shorter period required for tax year 2011. This rule benefits taxpayers by providing New York State and City of Yonkers withholding rates that more accurately reflect the current income tax rates. If this rule is not promulgated, the use of the existing withholding tables would cause some over-withholding for some taxpayers.

4. Costs: (a) Costs to regulated parties for the implementation and continuing compliance with this rule: Since (i) the Tax Law and the Code of the City of Yonkers already mandate withholding in amounts that

are substantially equivalent to the amounts of New York State and City of Yonkers personal income tax on residents reasonably estimated to be due for the taxable year, and (ii) this rule merely conforms Appendixes 10 and 10-A of Title 20 NYCRR to the rates of the New York State income tax and the City of Yonkers income tax surcharge on residents, any compliance costs to employers associated with implementing the revised withholding tables and other methods are due to such statutes, and not to this rule.

(b) Costs to this agency, the State and local governments for the implementation and continuation of this rule: Since the need to make amendments to the New York State Personal Income Tax Regulations under Article 22 of the Tax Law, the City of Yonkers Income Tax Surcharge on Residents Regulations, and to Appendixes 10 and 10-A, arises due to the statutory change in the rates of the New York State personal income tax for wages and other compensation paid on or after January 1, 2012, and due to the statutory change in the City of Yonkers income tax surcharge rate applied over a twelve-month period, there are no costs to this agency or the State and local governments that are due to the promulgation of this rule.

(c) Information and methodology: This analysis is based on a review of the statutory requirements and on discussions among personnel from the Department's Taxpayer Guidance Division, Office of Counsel, Office of Tax Policy Analysis Bureau of Tax and Fiscal Studies, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau.

5. Local government mandates: Local governments, as employers, would be required to implement the new withholding tables and other methods in the same manner and at the same time as any other employer.

6. Paperwork: This rule will not require any new forms or information. The reporting requirements for employers are not changed by this rule. Employers will be notified of the changed tables and other methods and directed to the Department's Web site for the new tables and other methods.

7. Duplication: This rule does not duplicate any other requirements.

8. Alternatives: Since sections 671(a) and 1329(a) of the Tax Law, section 15-105 of the Code of the City of Yonkers and Chapter 57 of the Laws of 2009 require that withholding tables and other methods be promulgated, there are no viable alternatives to providing such tables and other methods.

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 required information will be made available to affected employers in sufficient time to implement the revised New York and City of Yonkers withholding tables and other methods for wages and other compensation paid on or after January 1, 2012.