

**THE CITY OF NEW YORK
DEPARTMENT OF FINANCE**

NOTICE OF RULEMAKING

Pursuant to the power vested in me as Commissioner of Finance by sections 389(b) and 1043 of the New York New York City Charter and sections 11-1304(b) and 11-1308(1) of the Administrative Code of the City of New York, I hereby promulgate the within amendment to the Rules Relating to the New York City Cigarette Tax.

Section 1. Subdivision (a) of section 4-02 of chapter 4 of Title 19 of the Rules of the City of New York (Rules Relating to the Cigarette Tax) is amended to read as follows:

(a) [Beginning] On or after January 1, 1976, and before July 2, 2002, a tax at the rate of four cents for each ten cigarettes or fraction thereof, must be paid upon all cigarettes possessed in the [city] City for sale, provided, however, [beginning] on or after August 6, 1985 and before July 2, 2002, if a package of cigarettes contain more than [twenty] 20 cigarettes, the rate of tax on the cigarettes in such package in excess of [twenty] 20 shall be two cents for each five cigarettes or fraction thereof. On or after July 2, 2002 a tax at the rate of 75 cents for each ten cigarettes or fraction thereof, must be paid upon all cigarettes possessed in the City for sale, provided, however if a package of cigarettes contain more than 20 cigarettes, the rate of tax on the cigarettes in such package in excess of 20 shall be 38 cents for each five cigarettes or fraction thereof. Every package of cigarettes must have affixed thereto stamps of the proper amount. For example: on or after July 2, 2002 a package containing from [eleven] 11 to [twenty] 20 cigarettes must have affixed [eight cents] \$1.50 in stamps; a package containing ten cigarettes or less must have affixed [four] 75 cents in stamps; a package containing [twenty] 20 to [twenty-five] 25 cigarettes must have affixed [ten cents] \$1.88 in stamps; a package containing [twenty-six] 26 to [thirty] 30 cigarettes must have affixed [twelve cents] \$2.26 in stamps.

§2. Such section is amended by adding a new subdivision (b) to read as follows.

(b) Payment of cigarette tax on inventory. (1) Local Law 10 of 2002 required every dealer of cigarettes, including agents licensed to purchase and affix stamps, to take a physical inventory of all cigarettes possessed in the City as of the close of business on July 1, 2002. In addition, such local law required every dealer who is a licensed agent to take a physical inventory of all unaffixed cigarette tax stamps possessed as of the close of business on such date. In the event that it was not possible to take a physical inventory of cigarettes in all vending machines that are located within the City, a dealer was permitted to take as many physical inventories of the contents of such machines as was possible with available personnel. For those machines that could not be physically inventoried on July 1, 2002, cigarettes could be accounted for at one-half the normal fill capacities of such machines, as reflected in the individual inventory records maintained for such machines.

(2)(i)(A) On or before September 20, 2002, every such dealer shall file a return on a form prescribed by the Department of Finance for such purpose, showing the quantity of all cigarettes and unaffixed stamps possessed as of the July 1, 2002 inventory. Such return must reflect the entire wholesale and/or retail inventories of the dealer within the City, as required by the Department of Finance, regardless of the number of business locations of the dealer. Except as provided in subparagraph (B) of this subparagraph (i), every dealer shall pay, with the filing of such return, an additional tax for all cigarettes in such inventory that are contained in packages bearing stamps evidencing tax payment at the rates in effect prior to July 2, 2002, and for all unaffixed cigarette tax stamps in such inventory evidencing tax payment

at such rates. The additional tax shall be paid at the rate of 71 cents for each ten cigarettes or fraction thereof (\$1.42 per package of 20 cigarettes) unless cigarettes are contained in packages of more than 20, in which case the additional tax for those cigarettes in excess of 20 shall be at the rate of 36 cents for each five cigarettes or fraction thereof (\$1.78 per package of 25 cigarettes). Such tax shall be paid regardless of whether the affixed or unaffixed stamps show payment of the New York State tax or both the New York State and City taxes.

(B) Notwithstanding any other provision of law to the contrary, the tax due on cigarettes possessed in the City, as of the close of business on July 1, 2002, by any person for sale solely attributable to the increase imposed by this local law, may be paid in two installments, due on the twentieth days of September, 2002 and January, 2003, subject to such terms and conditions as the Department of Finance may prescribe; provided, however, no less than 25 percent of each such tax due shall be paid by September 20, 2002. Provided, however, in no event shall such installment be less than \$200 or the entire additional cigarette tax due, if less than \$200. Thus a dealer having an additional cigarette tax liability on inventory of \$100 would be liable for the full payment on September 20, 2002; a dealer having such a liability of \$440 would be liable for a first installment of at least \$200; and a dealer having such a liability of \$10,000 would be liable for a first installment of at least \$2,500 (\$10,000 × 25%). The second and final installment must be paid to the Department of Finance on or before January 20, 2003, and must be accompanied by a final payment document prescribed by the Department of Finance for this purpose. Where the Department of Finance has cause to believe that the final installment of the additional cigarette tax on inventory may be jeopardized by delay, the Department of Finance may require such payment at any time prior to January 20, 2003. (See paragraph (3) of this subdivision for sanctions concerning untimely installments.)

(ii) The additional cigarette tax on inventory and any applicable installment should be paid by check or money order, payable to the New York City Department of Finance.

(3)(i) Failure to file a return on cigarette and cigarette tax stamp inventory or to pay the additional tax due thereon, or failure to comply with any provision of this section may result in civil or criminal sanctions, or both.

(ii) In the case of any dealer who elects to pay the additional cigarette tax liability in installments, as described in subparagraph (B) of subparagraph (i) of paragraph (2) of this subdivision, if the required first installment is not properly paid on or before September 20, 2002, the entire amount of additional tax shall be due and owing, and any civil penalty and interest imposed pursuant to section 11-1317 of the Administrative Code and section 4-23 of these Rules will accrue from such date on the entire tax liability that remains unpaid. Where the required first installment is timely paid but any portion of the second and final installment is paid after January

20, 2003, any civil penalty and interest so imposed will accrue from such date on the unpaid balance.

§3. Subdivision b of section 4-16 of Title 19 of such Rules is amended to read as follows:

(b) Where a joint stamp is issued by the State of New York and the City for the payment of the taxes imposed by the City's Cigarette Tax Law and by Article 20 of the Tax Law of the State, in lieu of a single stamp evidencing payment of the cigarette tax, and such joint stamp is issued by the State of New York and the City of New York for payment of the State tax (at the rate of [twenty one cents] \$1.50 per package of twenty cigarettes) and the City tax (at the rate of [eight cents] \$1.50 per package of twenty cigarettes), the following schedule of commissions have been fixed by the Commissioner of Finance pursuant to the City's Cigarette Tax Law with the approval of the [State Tax Commission] New York State Department of Taxation and Finance, and for the purposes of this schedule the par value of a joint stamp issued by the State of New York and the City of New York for payment of the State tax (at the rate of [twenty one cents] \$1.50 per package of twenty cigarettes), and the City tax (at the rate of [eight cents] \$1.50 per package of twenty cigarettes) shall be deemed to be [twenty one cents] \$1.50 each for State purposes and [eight cents] \$1.50 each for City purposes.

On the City par value of such joint stamps, not exceeding [~~\$801,600~~] \$5,611,200 purchased during each calendar year, a commission of [1.52] 0.2171 percent thereof except as otherwise provided herein; and on the City par value of such joint stamps in excess of [~~\$801,600~~] \$5,611,200 purchased during each calendar year a commission of [1.08] 0.0992 percent thereof. Said rate of [1.08] 0.0992 percent shall also apply, even though the total City par value of joint stamps purchased during any calendar year does not exceed [~~\$801,600~~] \$5,611,200, whenever the value of New York State cigarette tax stamps (including the amount of the New York State cigarette tax represented by such joint stamps) purchased by any agent during each calendar year exceeds the sum of [~~\$2,104,200~~] \$5,611,200, computed at the State par value of [twenty one cents] \$1.50 each. However, for the purpose of determining the point when said amount of [~~\$2,104,200~~] \$5,611,200 is reached, whenever the quantity of New York State cigarette tax stamps and/or the portion of the New York State cigarette tax included in joint stamps purchased by an agent at any one time brings the agent's total purchases of stamps evidencing payment of the New York State cigarette tax to at least [~~\$2,104,200~~] \$5,611,200, the amount purchased at such time shall be first applied to the previous total of purchases of stamps evidencing payment of the New York State cigarette tax until [~~\$2,104,200~~] \$5,611,200 is reached.

§4. These amendments shall take effect as of July 2, 2002.

BASIS AND PURPOSE OF AMENDMENTS

These amendments affect the portion of the Rules Relating to the New York City Cigarette Tax relating to the rate of tax. Specifically, these amendments reflect the enactment by the City Council of Local Law 10 of 2002 increasing the rate of such tax as of July 2, 2002, requiring agents and dealers to take a physical inventory of all cigarettes and stamps possessed for sale in the City on July 1, 2002, and providing for the payment of the increased cigarette tax due on such cigarettes in two installments, subject to terms and conditions established by the Department of Finance.

These amendments also affect the portion of such rules governing the payment of commissions to agents for affixing stamps evidencing the payment of the tax. Local Law 10 of 2002 increased the New York City Cigarette Tax to \$1.50 for a pack of 20 cigarettes. Under the authority granted by section 11-1304(b) of the Administrative Code of the City of New York, the Commissioner of Finance is authorized to prescribe a schedule of commissions payable to agents for affixing stamps evidencing the payment of the tax. The proposed amendment adjusts the commission rate payable to reflect the increase in the tax to \$1.50 for a pack of 20 cigarettes and to reflect the rate of commissions paid by the New York State Department of Taxation and Finance with respect to joint stamps representing payment of both the City tax and the New York State tax.

/S/ Martha E. Stark
Commissioner of Finance