

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 that are necessary to enforce the personal income tax; section 1309(not subdivided) provides that City of New York personal income tax withholding shall be withheld from city residents in the same manner and form as that required by New York State; section 1312(a) provides that any personal income tax imposed on New York City residents by the City of New York shall be administered and collected by the Tax Commissioner in the same manner as the tax imposed by Article 22 of the Tax Law, except where noted; Administrative Code of the City of New York, section 11-1771(a) provides that the method of determining the amount of City tax withholding will be prescribed by tax regulations promulgated by the Commissioner; section 11-1797(a) provides for the Commissioner to make such rules and regulations that are necessary to enforce the provisions of the Administrative Code of the City of New York; section 11-1909 (not subdivided) and section 11-1943 (not subdivided) provide that after January 1, 1976 the laws found in Parts V and VI of Article 22 of the Tax Law, which contain sections 671 through 699 of the Tax Law and which pertain to the withholding of tax and the procedural and administrative aspects of the state tax law, shall have the same force and effect as if they were incorporated into the Administrative Code of the City of New York, except where noted.

2. Legislative objectives: New Appendix 10-C of Title 20 NYCRR contains the revised City of New York withholding tables and other methods applicable to wages and other compensation paid on or after July 1, 2003. The amendments reflect the revision of the tax tables and the newly added tax table benefit recapture in Chapter 63 of the Laws of 2003, and the requirement in the new law that the withholding rates for the remainder

of tax year 2003 reflect the full amount of tax liability for tax year 2003 as accurately as practicable. The revised tax tables include two new brackets for taxpayers at the highest levels of taxable income and an increase in the tax rates for taxpayers whose taxable income reaches these levels. The rule also reflects the increase, to 5.60 percent, of the City of New York supplemental withholding tax rate to be applied to supplemental wage payments.

3. Needs and benefits: This rule sets forth City of New York withholding tables and other methods, applicable to wages and other compensation paid on or after July 1, 2003, reflecting the revision of the City of New York tax tables and the newly added City tax table benefit recapture contained in Chapter 63 of the Laws of 2003. This rule benefits taxpayers by providing City of New York withholding rates that more accurately reflect the current income tax rates. If this rule was not promulgated, the use of the existing withholding tables would cause some under withholding for some taxpayers.

In order to have these provisions in place by July 1, 2003, the rule was previously adopted as an emergency measure on July 1, 2003. The emergency measure is scheduled to expire on September 28, 2003. The proposal to make the rule permanent was published in the State Register on August 13, 2003, but the permanent rule will not be effective until the date that the Notice of Adoption is published in the State Register. The earliest date the Notice of Adoption may be published is October 15, 2003. This emergency re-adoption is necessary to extend the life of these provisions past October 15, 2003, and ensure the continuation of withholding rates that more accurately reflect the current income tax rates.

4. Costs: (a) Costs to regulated parties for the implementation and continuing compliance with this rule: Since (i) the Tax Law and the Administrative Code of the City of New York already mandate withholding in amounts that are substantially equivalent to the amounts of City of New York personal income tax on residents reasonably estimated to be due for the taxable year, and (ii) this rule merely conforms Appendix 10-C of Title

20 NYCRR to the rates of the City of New York personal income tax 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 revise the City of New York personal income tax on residents withholding tables and other methods arises due to the statutory change in the rates of City of New York personal income tax on residents, 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 Technical Services Bureau, Office of Counsel, Division of Tax Policy Analysis, Management Services Bureau, Operations Support Bureau and Bureau of Fiscal Management.

5. Local government mandates: Any local governments, as employers, maintaining an office or transacting business within New York City, who have a City of New York resident as an employee, 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 have been sent copies of the new tables and other methods as part of the employer's guide which is routinely revised.

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

8. Alternatives: Since section 11-1771(a) of the Administrative Code of the City of New York mandates that City of New York withholding tables and other methods be promulgated, there are no viable alternatives to

providing such tables and other methods. The only alternative to promulgating this rule would be to allow the withholding tables adopted as an emergency measure to lapse. That alternative, however, would require that employers withhold at rates that no longer reflect the personal income tax rates of the City of New York which will be in effect for the 2003 tax year.

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: Affected employers have received the required information in sufficient time to implement the revised City of New York withholding tables and other methods for wages and other compensation paid on or after July 1, 2003.