

## UNLAWFUL TAX COLLECTION RULE

### New York City Department of Consumer Affairs

#### Notice of Public Hearing and Opportunity to Comment on Proposed Rule

##### **What are we proposing?**

This proposed rule declares that collection of sales taxes on goods and services that are not subject to such tax laws shall be a deceptive trade practice for purposes of Section 20-701 of Subchapter 1 of Chapter 5 of Title 20 of the New York City Administrative Code.

**When and where is the Hearing?** The Department of Consumer Affairs will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 a.m. on May 11<sup>th</sup>, 2015. The hearing will be in the Department of Consumer Affairs hearing room at 66 John Street, 11<sup>th</sup> Floor, New York, NY 10038.

**How do I comment on the proposed rules?** Anyone can comment on the proposed rule by:

- **Website.** You can submit comments to the Department of Consumer Affairs through the New York City rules Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to [Rulecomments@dca.nyc.gov](mailto:Rulecomments@dca.nyc.gov).
- **Mail.** You can mail written comments to Mary Cooley, Director of City Legislative Affairs, New York City Department of Consumer Affairs, 42 Broadway, New York, NY 10004.
- **Fax.** You can fax written comments to the Department of Consumer Affairs, (646) 500-5962.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 436-0392. You can also sign up in the hearing room before the hearing begins on May 11<sup>th</sup>, 2015. You can speak for up to three minutes.

**Is there a deadline to submit written comments?** Yes. You must submit any written comments to the proposed rule on or before May 11<sup>th</sup>, 2015.

**Do you need assistance to participate in the Hearing?** You must tell the Office of Legislative Affairs if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 436-0392. You must tell us by May 8<sup>th</sup>, 2015.

**Can I review the comments made on the proposed rules?** You can review the comments made online on the proposed rules by going to the Web site at <http://rules.cityofnewyork.us/>. A few days

after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at the Office of Legal Affairs.

**What authorizes the Department of Consumer Affairs to make this rule?** Sections 1043 and 2203(f) of the City Charter and Section 20-702 of Subchapter 1 of Chapter 5 of Title 20 of the New York City Administrative Code authorize the Commissioner of the Department of Consumer Affairs to make this proposed rule. This proposed rule was not included in regulatory agenda of the Department of Consumer Affairs for this Fiscal Year because it was not contemplated when the Department published the agenda.

**Where can I find the rules of the Department of Consumer Affairs?** The Department of Consumer Affairs' rules are in Title 6 of the Rules of the City of New York.

**What rules govern the rulemaking process?** The Department of Consumer Affairs must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

### **Statement of Basis and Purpose of Proposed Rule**

Section 2203 of Chapter 64 of the Charter of the City of New York authorizes the Commissioner to enforce laws prohibiting deceptive trade practices, and, upon notice and hearing, to impose civil penalties for the violation of such laws. Section 2203(h)(3) provides that no act or practice shall be deemed a deceptive trade practice unless it has been declared as such, and described with reasonable particularity in a law or rule promulgated by the Commissioner.

Pursuant to Title 20 of the New York City Administrative Code, the Department regulates merchants in New York City and promulgates rules and regulations to protect consumers in the marketplace. Article 28 of the New York State Tax law specifies the categories of goods and services that are subject to sales and use taxes. The proposed rule is necessary to declare that collection of sales taxes on goods and services that are not subject to such tax laws shall be a deceptive trade practice for purposes of Section 20-701 of Subchapter 1 of Chapter 5 of Title 20 of the New York City Administrative Code.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

New text is underlined; deleted material is in [brackets].

### **Proposed Rule**

Part 4 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York is amended by adding a new Section 5-41 to read as follows:

#### **§5-41 Unlawful Sales Tax.**

It is a deceptive trade practice for any seller to collect sales tax on the sale of any good or service that is not subject to such tax under Article 28 of the New York State Tax Law or the rules and regulations promulgated thereunder.

**NEW YORK CITY LAW DEPARTMENT  
DIVISION OF LEGAL COUNSEL  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-356-4028**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE:** Unlawful Tax Collection

**REFERENCE NUMBER:** 2015 RG 038

**RULEMAKING AGENCY:** Department of Consumer Affairs

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN  
Acting Corporation Counsel

Date: March 30, 2015

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: UNLAWFUL TAX COLLECTION RULE**

**REFERENCE NUMBER: DCA-23**

**RULEMAKING AGENCY: DEPARTMENT OF CONSUMER AFFAIRS**

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because the requirement for a cure period is not practicable under the circumstances and is mitigated by the extensive negotiation with, as well as the notice, outreach, and guidance on compliance to, the regulated individuals and communities.

/s/ [Stephen Narloch]  
Mayor's Office of Operations

[3/30/2015]  
Date