

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1019 Tax-and-surcharge-free Cigarettes

**SPONSOR(S):** Goodson

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 1558

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	9 Y, 0 N	Butler	Anstead
2) Finance & Tax Committee		Dugan	Langston
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

Prior to 2009, recognized Indian tribes in Florida were permitted to sell tax-free cigarettes to tribal and nontribal members on reservations in Florida. When the \$1 per package surcharge was added in Florida in 2009, the tax free tribe program was discontinued and replaced with a process whereby tribes were provided coupons to sell tax-free cigarettes to tribal members only. Currently, a tribe receives "Indian tax-and-surcharge-exemption coupons" in an amount that is based on the probable demand of the tribal members and calculated by multiplying the number of tribal members times five packs of cigarettes times 365.

The bill provides that tribes may use excess "Indian-tax-and-surcharge-exemption coupons," beyond the number of cigarettes demanded by tribal members, for the sale of tax-and-surcharge-free cigarettes to nontribal members for purchases made on the reservation.

The number of Indian-tax-and-surcharge-exemption coupons given to a tribe is not increased by this bill, and thus, the number of Indian-tax-and-surcharge-free cigarettes sold by tribes is still limited by the number of exemption coupons currently being provided to the tribes.

The Revenue Estimating Conference determined the bill is not expected to have a fiscal impact to state or local governments.

The bill has an effective date of July 1, 2016.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

The Department of Business and Professional Regulation (Department) licenses and regulates certain businesses and professionals in Florida. It is structured to include separate divisions and various professional boards responsible for carrying out the Department's mission to license efficiently and regulate fairly. The Division of Alcoholic Beverage and Tobacco (Division) within the Department is responsible for the enforcement of ch. 569, F.S., regulating tobacco products.

The Division oversees the collection of excise taxes from the sale of cigarettes and other tobacco products. Part I, ch. 210, F.S., consisting of ss. 210.01-210.22, F.S., provides for the taxation of cigarettes. Part II, ch. 210, F.S., consisting of ss. 210.25-210.75, F.S., provides for the taxation of tobacco products other than cigarettes and cigars.

#### **Cigarette Excise Tax and Surcharge Collection**

In Florida, a cigarette surcharge is levied on each cigarette and pack of cigarettes; the surcharge varies based on the weight and length of the cigarettes or the quantity of cigarettes in a package.<sup>1</sup> This surcharge ranges from 50 cents to \$4 per pack, with a \$1 surcharge assessed on the most common pack of cigarettes (packs containing more than 10 but less than 20 cigarettes).<sup>2</sup>

Florida also charges an excise tax, which varies based on the weight and length of the cigarettes or the quantity of cigarettes in a package. This tax ranges from 16.95-cents to 135.6-cents per pack, with a 33.9-cent tax on the standard 20-cigarette pack.

A tax stamp must be affixed to the cigarette package, as evidence that the excise tax has been paid, before the cigarettes can be offered for sale in this state.<sup>3</sup> Dealers and manufacturers who are authorized by the Division to affix the stamps to packages will purchase the stamps at the value of the tax and surcharge, and pass along the cost to vendors.<sup>4</sup> If a stamped cigarette is sold and shipped to another state, or is damaged and unfit for sale, the manufacturer or dealer may receive a refund of the tax and surcharge.<sup>5</sup>

#### **Exemption from Cigarette Taxes for Recognized Indian Tribes**

In 1979 the Legislature granted to the Seminole Tribe of Florida the authority to sell tax-free cigarettes on reservations to the public from reservation cigarette sellers. At that time, there was only a \$0.339 excise tax. When the \$1 surcharge was added by Chapter 2009-79, Laws of Florida, the tax-free tribe program was discontinued, and instead, another process was established whereby recognized tribes<sup>6</sup> in Florida were provided a coupon for tax-free cigarettes to sell to their tribal members only.<sup>7</sup>

The Division provides "Indian tax-and-surcharge-exemption coupons" (coupons) to each recognized tribe in Florida in an amount that is based on the probable demand of the tribal members and calculated by multiplying the number of members of the tribe times five packs of cigarettes times 365.<sup>8</sup>

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<sup>1</sup> s. 210.011, F.S.

<sup>2</sup> *Id.*

<sup>3</sup> ss. 210.05 & 210.06, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> s. 210.11, F.S.

<sup>6</sup> Currently, the state recognized the Seminole and Miccosukee Tribes

<sup>7</sup> Ch. 2009-79, Laws of Fla.

<sup>8</sup> s. 210.1801, F.S. Currently there are approximately 4,000 members of the Seminole Tribe, which places the number of coupons provided to the Seminole Tribe of Florida's governing body at approximately 7,300,000 coupons. The approximate retail value of these coupons is \$9,774,700.

The state provides the tribe with coupons quarterly, and the tribe's governing body distributes the coupons to reservation cigarette sellers.<sup>9</sup> The reservation cigarette sellers present the coupons to a wholesale dealer in order to purchase tax-exempt cigarettes. Wholesale dealers are required to submit documentation to the Division to claim a refund on any taxes paid for tax-exempt cigarettes sold to tribes.<sup>10</sup> A tribal member may purchase exempt cigarettes from a reservation cigarette seller if such cigarettes have an affixed cigarette-tax-and-surcharge stamp.<sup>11</sup>

Currently a nontribal member is not exempt from paying the cigarette tax or surcharge when purchasing within the state, regardless of whether the purchase is made on a reservation.

### **Effect of the Bill**

The bill provides that a tribe may use excess coupons for the sale of tax-and-surcharge-free cigarettes to nontribal members in purchases made on the reservation. The bill does not provide a method for determining the number of excess coupons.

The bill does not increase the number of coupons given to the governing body of a tribe, and thus, the number of tax-and-surcharge-free cigarettes sold by a tribe is limited by the number of coupons already being provided to the tribe.

The bill has an effective date of July 1, 2016.

#### **B. SECTION DIRECTORY:**

**Section 1** Amends s. 210.1801, F.S., to provide that excess Indian-tax-and-surcharge-exemption coupons may be used by a recognized Indian tribe when selling cigarettes to nontribal members on the reservation.

**Section 2** Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The amount of the cigarette tax and surcharge in Florida is currently approximately \$1.34 per pack. Thus, the bill would allow nontribal members to obtain a pack of cigarettes for at least \$1.34 less than

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<sup>9</sup> s. 210.1801, F.S.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

the price at retail outlets not located on a reservation. Whether nontribal members will modify purchasing behavior to direct purchases to reservation retail outlets is unknown, and consequently, potential revenue impacts for other private sector retail outlets is unknown.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not provide a method for determining excess coupons, or whether this determination should be done quarterly or annually. If the excess is determined on a quarterly basis and the tribe sells the excess to nontribal members in earlier quarters, it is possible that the tribe will not have enough cigarettes for tribal members in later quarters.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.