

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 1558

INTRODUCER: Senator Evers

SUBJECT: Exemption from the Cigarette Tax and Surcharge

DATE: February 12, 2016

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|--------------------|
| 1. | Oxamendi | Caldwell | RI | Pre-meeting |
| 2. | | | FT | |
| 3. | | | AP | |

I. Summary:

SB 1558 permits Indian tribes in this state to sell excess tax-free cigarettes to persons who are not members of the tribe. 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 program in which an Indian tribe is given coupon to purchase tax-free cigarettes from wholesalers to sell only to members of the tribe on the reservation.

Currently, the number of coupons is based on the probable demand of the tribal members and is 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, to sell tax-and-surcharge-free cigarettes to nontribal members for purchases made on the reservation.

The bill does not increase the number of tax-and-surcharge-exemption coupons given to the governing body of a recognized Indian tribe. Therefore, the number of tax-and-surcharge-free cigarettes sold by a recognized Indian tribe is limited by the number of exemption coupons that are provided to the tribe under current law.

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

II. Present Situation:

Regulation and Taxation of Cigarettes and Other Tobacco Products

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (department) 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.

The retail sale and delivery of tobacco is governed by the division under the provisions of ch. 569, F.S.

Cigarette Regulation and Taxation

Section 210.15(1)(a), F.S., requires a permit issued by the division before any person, firm, or corporation may engage in business as a manufacturer, importer, exporter, distributing agent, or wholesale dealer of cigarettes. A separate application and permit is required for each place of business located within the state or, in the absence of such place of business in this state, for wherever its principal place of business is located.

Section 210.01(1), F.S., defines the term “cigarette” to mean:

Any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient.

The current excise tax in Florida ranges from 16.95 cents per package to 67.8 cents per package, depending on the number of cigarettes per package.¹ The current excise tax is 33.9 cents per standard 20-cigarette pack.²

Section 210.011, F.S., imposes a surcharge on the sale, receipt, purchase, possession, consumption, handling, distribution, and use of cigarettes in this state. The amount of the surcharge varies depending on the weight of the cigarette, its length, and the number of cigarettes in the package. A one dollar surcharge is assessed for packages containing more than 10 but not more than 20 cigarettes.

A “wholesale dealer” sells cigarettes to retail dealers for resale only.³

Section 210.06, F.S., requires that every wholesale dealer affix a tax stamp as evidence that the excise tax has been paid before the cigarettes can be offered for sale in this state. Sections 210.02

¹ Section 210.02(3) and (4), F.S.

² Section 210.02(3)(b), F.S.

³ Section 210.01(6), F.S.

and 210.04, F.S., provide that excise taxes must be paid by the wholesale dealer upon the first sale or transaction within this state whether or not such sale or transfer is to the ultimate purchaser or consumer. Because wholesalers may purchase cigarettes from other wholesalers, only the first sale is taxed. Distributing agents, acting as agents to the manufacturers, are not required to pay taxes for the distribution of cigarettes to wholesalers. Collected excise taxes are paid to the division. Stamps representing various denominations of tax are purchased in bulk by wholesale dealers and are affixed to packages as proof of payment.⁴ Cigarettes that are not properly stamped may not be sold in Florida.⁵ The amount of the tax then becomes a part of the price of the cigarettes to be paid by the purchaser or consumer.

Exempt Cigarettes for Members of Recognized Indian Tribes

In 1979 the Legislature granted to the Seminole Tribe of Florida the authority to sell tax free cigarettes to the public from reservation smoke shops.⁶ In 2009, when the \$1 surcharge was added to cigarettes, the Legislature created s. 210.1801, F.S., to provide the process in which Indian tribes are provided with tax-and-surcharge-exemption coupons (coupons) to purchase tax-free cigarettes from wholesalers for sale only to members of the tribe.⁷

Section 210.1801(1), F.S., provides that a member of an Indian tribe recognized in Florida who purchases cigarettes on an Indian reservation for his or her own use is exempt from paying a cigarette tax and surcharge. However, members of an Indian tribe must pay the cigarette tax or surcharge when they purchase cigarettes outside of an Indian reservation. Persons who are not a member of an Indian tribe are not exempt from paying the cigarette tax or surcharge when purchasing cigarettes on an Indian reservation within this state.

Section 210.1801(2), F.S., provides the method of providing tax-exempt cigarettes to recognized Indian tribes. It requires the state to provide the recognized Indian tribes with a number of tax-and-surcharge-exemption coupons to use when buying stamped tax-paid cigarettes from the wholesalers. Cigarette packages are stamped with an indicia to indicate that the applicable tax and surcharge have been paid.⁸ The term “stamped cigarette” means that the applicable tax and surcharge has been paid.⁹

Section 210.1801(3), F.S., provides the method for calculating the number of coupons based on the “probable demand of tribal members on the tribe’s reservation plus the number needed for official tribal use.” This method requires that the recognized Indian tribes in Florida (the Seminole and Miccosukee tribes) annually provide the division with the number of members in their tribes. This number is used to calculate the maximum number of coupons for tax-exempt cigarettes the tribes may receive during the fiscal year. The total number is calculated by multiplying the number of members of the tribe (including children) by five packs of cigarettes by 365 (the number of days in a year).

⁴ Sections 210.05 and 210.06, F.S.

⁵ Section 210.06, F.S.

⁶ See s. 2, 79-317, L.O.F., and *Vending Unlimited, Inc., v. State of Florida*, 364 So2d 548 (Fla. 1st DCA, 1979), which held that cigarette sales to and by Indians on an Indian reservation were not taxable.

⁷ Chapter 2009-79, L.O.F.

⁸ Section 210.01(19), F.S.

⁹ See ss. 210.01(18) and (19), F.S.

According to the analysis of the Revenue Estimating Conference (REC) for this bill, the current calculation results in an approximate retail value of the coupons as follows: \$9,774,700 based on 4000 members of the Seminole Tribe, and \$1,563,952 based on 640 members of the Miccosukee Tribe.¹⁰

The coupons are provided to the Indian tribes on a quarterly basis.¹¹ Once the total number of packs is determined, the number of tax-exempt cigarette packs per quarter of the year is calculated. Coupons representing the total amount of tax-exempt packs are printed and disbursed to the Indian tribe council offices each quarter.

The coupons are then distributed by the tribe to the reservation cigarette sellers (smoke shops). When the reservation smoke shops go to the stamping wholesalers to purchase cigarettes, they give the coupons to the wholesalers in exchange for stamped cigarettes.¹² However, the reservation smoke shop purchases these cigarettes without the tax or surcharge applied.¹³ The wholesaler then redeems the coupons for a refund when they purchase additional cigarette tax stamps from the division.¹⁴ Any cigarettes purchased over and above the number represented by the tax-exempt coupons are purchased with the taxes applied.

Section 210.1801(3)(b), F.S., requires each wholesale dealer to keep records of transactions involving Indian tax-and-surcharge-exemption coupons. It also specifies the documentation that wholesalers must submit to the division when claiming a refund.

Section 210.1801(4)(b), F.S., permits members of the tribe to purchase cigarettes for personal use without payment of the cigarette tax and surcharge if the cigarettes are purchased on a qualified reservation. The reservation smoke shops are not required to keep a record of their cigarette sales.

III. Effect of Proposed Changes:

The bill amends s. 210.1801, F.S., to permit an Indian tribe to use excess coupons to sell tax-and-surcharge-free cigarettes to nontribal members in purchases made on the reservation.

The bill does not provide a method for determining of the number of excess coupons. The bill also does not alter the method for determining the tribal members' probable demand for cigarettes, including the number needed for official use, to reflect the number of excess coupons.

The bill does not increase the number of tax-and-surcharge-exemption coupons given to the governing body of a recognized Indian tribe. Therefore, the number of tax-and-surcharge-free

¹⁰ See Revenue Estimating Conference's analysis for HB 1019 and SB 1558, dated February 5, 2016, at: http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2016/_pdf/page513-514.pdf (last visited February 12, 2016).

¹¹ Section 210.1801(3), F.S.

¹² Section 210.1801(4), F.S.

¹³ *Id.*

¹⁴ Section 210.1801(4)(a), F.S.

cigarettes sold by a recognized Indian tribe is limited by the number of exemption coupons that are provided to the tribe under current law.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Revenue Estimating Conference for this bill, the bill will not have a fiscal impact. The bill does not increase the number of tax-and-surcharge-exemption coupons given to the governing body of a recognized Indian tribe.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 210.1801 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
