

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: CS/SB 1550

INTRODUCER: Regulated Industries Committee and Senator Evers

SUBJECT: Tax-exempt Cigarettes

DATE: April 10, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	_____	_____	<u>AFT</u>	_____
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1550 repeals the method for providing the Indian tribes with a specific number of tax-exempt cigarettes each year for sale to members of a recognized Indian tribe. The bill permits the Indian tribes to sell a limited number of tax-exempt cigarettes at tribal smoke shops to members of a recognized Indian tribe and to persons who are not members of an Indian tribe. The maximum number of tax-exempt cigarettes that the tribal business entity may purchase and sell annually is calculated by multiplying the number of members of the tribe by five packs of cigarettes times 365.

The bill permits the agents or wholesale cigarettes dealers to continue to sell stamped and untaxed cigarettes to the Indian tribes. The dealers can only sell to one tribal business entity per Indian tribe. The stamping wholesaler must then request a refund for the excise taxes and surcharge taxes that are not collected from the Indian tribes.

The bill prohibits members of the public from purchasing or possessing more than three cartons of tax-exempt cigarettes from a tribal smoke shop within a 7-day period. A person who violates this prohibition commits a misdemeanor of the second degree, which is punishable by a term of imprisonment not exceeding 60 days and a fine not to exceed \$500.

The bill defines a tribal business entity as a federally chartered corporation charged with the duty of creating, expanding, and developing business enterprises for the economic betterment of a recognized Indian tribe. The bill requires that the tribal business entity issue a certificate of

authority to the tribal smoke shops for a reasonable fee. The bill requires that the tribal business entity regulate the conduct of reservation smoke shops, which at minimum, must include surveillance cameras at drive-through smoke shops that capture images or a video of each customer who purchases tax-exempt cigarettes and his or her car and license plate, and the recording of the driver license number of each customer who purchases tax-exempt cigarettes. The drive-through tribal smoke shop must also display a large sign inside the store that gives notice of the 3-carton limit and warns customers of the surveillance cameras in use. The drive-through tribal smoke shop must report at least monthly to the tribal business entity any violation or attempted violation of the three-carton limit.

The bill the tribal business entity to deposit all cigarette revenues into a fund dedicated exclusively to funding tribal health care, including the creation of a Tribal Comprehensive Tobacco Education and Use Prevention Program modeled after the program created under s. 381.84, F.S.

The bill adds two additional members to the 23-member Tobacco Education and Use Prevention Advisory Council. The bill requires that the two additional members of the council must be members of the Seminole Indian Tribe of Florida, one of whom must be a member of the Tribal Comprehensive Tobacco Education and Use Prevention Program.

The bill provides an effective date of July 1, 2014.

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 cigarettes.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 a package. A one dollar surcharge is assessed for packages containing more than 10 but not more than 20 cigarettes.

A “distributing agent” is any person, firm, or corporation who receives cigarettes and distributes them to wholesalers or other distributing agents inside or outside the state.³ An “agent” is any person authorized by the division to purchase and affix adhesive or meter stamps under part I of ch. 210, F.S.⁴ A “wholesale dealer” sells cigarettes to retail dealers for resale only, or operates cigarette vending machines in more than one place of business.⁵ An “exporter” is a person who transports tax-exempt cigarettes into Florida under bond for delivery beyond state borders.⁶

Section 210.06, F.S., requires that every 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 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.⁷ Cigarettes that are not properly stamped may not be sold in Florida.⁸ The amount of the tax then becomes a part of the price of the cigarettes to be paid by the purchaser or consumer.

Cigarette manufacturers report information pertaining to the tobacco settlement agreement to the Attorney General’s Office rather than to the division. Section 210.09(2), F.S., requires a monthly report by “any distributing agent, wholesale dealer, retail dealer, common carrier, or any other person handling, transporting or possessing cigarettes for sale or distribution within the state.”

¹ Section 210.02(3) and (4), F.S.

² Section 210.02(3)(b), F.S.

³ Section 210.01(14), F.S.

⁴ Section 210.01(9), F.S.

⁵ Section 210.01(6), F.S.

⁶ Section 210.01(17), F.S.

⁷ Sections 210.05 and 210.06, F.S.

⁸ Section 210.06, F.S.

All manufacturers must report to the division the amount of cigarettes, by invoice total, shipped to Florida cigarette stamping wholesalers, i.e., distributors.

Cigarette distributing agents file a monthly report with the division detailing the number of cigarettes shipped through their warehouse for the preceding month, including all cigarettes received from manufacturers and delivered to each stamping agent. Stamping agents file a monthly report listing all stamp purchases and usage for the preceding month, including ending and beginning inventories. Wholesale distributors that are not stamping agents file a similar report of all purchases and sales inside and outside the state for the preceding month, including ending and beginning inventories. Sales of cigarettes out-of-state are reported on a wholesale dealer's monthly report as exempt from the excise tax because the tax applies only to sales in Florida. The monthly report details the number of cigarette packages, but does not include any information about the quantity of each brand. There are no reporting requirements for retailers.

Revenues from the taxes as well as the license fees are then distributed by the Bureau of Auditing to the statutorily designated recipients on a monthly or quarterly basis.

Exempt cigarettes for Members of Recognized Indian Tribes

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. Person 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. The state provides the recognized Indian tribes a number of tax-exempt coupons to use when buying regularly stamped cigarettes from the stamping wholesalers.

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).

The coupons are provided to the Indian tribes on a quarterly basis. 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.

According to the department, the coupons are then distributed to the reservation smoke shops by the tribe councils. When the reservation smoke shops go to the stamping wholesalers to purchase cigarettes, the wholesaler redeems the coupons for tax-exempt cigarettes. Any cigarettes

purchased over and above the number represented by the tax-exempt coupons are purchased with the taxes applied. The coupons are then redeemed by the stamping wholesalers to the division when they purchase additional cigarette tax stamps. The redeemed coupons can be verified with the coupons issued to confirm the applicable coupons and the appropriate number of tax-exempt cigarettes being provided to the Indian tribes.

Section 210.1801(3)(b), F.S., requires that each wholesale dealer must 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.

Tobacco Education and Use Prevention Advisory Council

Section 381.84, F.S., implements s. 27, Art. X of the State Constitution, which requires the funding of a comprehensive statewide tobacco education and prevention program. The program must be consistent with the recommendations for effective program components in the 1999 Best Practices for Comprehensive Tobacco Control Programs of the Centers for Disease Control and Prevention.⁹

Section 381.84(4), F.S., creates the Tobacco Education and Use Prevention Advisory Council (council). The council consists of 23 members. Its function is to advise the State Surgeon General as to the direction and scope of the Comprehensive Statewide Tobacco Education and Use Prevention Program, including providing advice on the program's priorities and emphases, and on the overall program budget.

III. Effect of Proposed Changes:

Definitions

The bill creates s. 210.01(23), F.S., to define the term "tax-exempt cigarettes" to mean cigarettes exempt from the cigarette excise tax under s. 210.02, F.S., and the cigarette surcharge under s. 210.011, F.S.

The bill creates s. 210.01(24), F.S., to define the term "tribal business entity" to mean a federally chartered corporation charged with the duty of creating, expanding, and developing business enterprises for the economic betterment of a recognized Indian tribe.

The bill creates s. 210.01(23), F.S., to define the term "tribal smoke shop" to mean an entity located on an Indian reservation which is authorized to sell tax-exempt cigarettes to members of an Indian tribe recognized by this state and to the public.

Sale of Tax-Exempt Cigarettes by a Tribal Business Entity

The bill repeals s. 210.1801, F.S., and provides a method for providing the Indian tribes with an unlimited number of tax-exempt cigarettes for sale to members of the tribe and to persons who are not a member of the tribe.

⁹ See Centers for Disease Control and Prevention, *Best Practices for Comprehensive Tobacco Control Programs – 2014* at http://www.cdc.gov/tobacco/stateandcommunity/best_practices/index.htm?source=govdelivery (Last visited April 10, 2014).

The bill amends s. 210.05(5), F.S., to delete the requirement that cigarettes sold to the Seminole Tribe of Florida must be administered as provided in s. 210.1801, F.S.

The bill amends s. 210.05(5), F.S., to provide that an agent or wholesale dealer may sell stamped and untaxed cigarettes to no more than one tribal business entity per recognized Indian tribe for retail sale on an Indian reservation.

The agent or wholesale dealer must treat the stamped cigarettes and the sale of the stamped cigarettes in the same manner as other sales with respect to reporting and stamping. The bill prohibits that agent or wholesale dealer from collecting from the tribal business entity the cigarette excise tax imposed under s. 210.02, F.S., or the cigarette surcharge imposed under s. 210.011, F.S. The bill provides that the tribal business entity is responsible to the agent or wholesale dealer for the services and expenses incurred in affixing the stamps and accounting for the stamps.

Section 210.05(6), F.S., provides that the stamping wholesaler can file a claim for a refund for the cigarettes tax or surcharge that was not collected from the Indian tribe, and that the division may reimburse the wholesaler for those taxes.

The bill creates s. 210.221, F.S., to provide for the sale of cigarettes on Indian reservations.

Section 210.221(1), F.S., provides the legislative intent that the retail sale of tax-exempt cigarettes is permitted on Indian reservations by tribal smoke shops authorized to operate under s. 210.222, F.S. It provides that members of a recognized Indian tribe and members of the public are permitted to purchase tax-exempt cigarettes from authorized tribal smoke shops, and that tax-exempt cigarettes may be distributed to tribal smoke shops by tribal business entities as prescribed in this section.

Section 210.221(2), F.S., permits a tribal business entity to purchase stamped and untaxed cigarettes from agents or wholesale dealers for retail sale in accordance with subsections (5) and (6). The tribal business entity may sell or distribute the tax-exempt cigarettes only to a tribal smoke shop authorized to operate under s. 210.222, F.S. The bill limits the maximum number of tax-exempt cigarettes that the tribal business entity may purchase and sell annually. The maximum is calculated by multiplying the number of members of the tribe by five packs of cigarettes times 365. This calculation is comparable to method in s. 210.1801, F.S., for determining the number of tax-exempt coupons that the tribe may receive.

Section 210.221(3), F.S., authorizes tribal smoke shops to purchase tax-exempt cigarettes from a tribal business entity even though the cigarettes have an affixed cigarette tax-and-surcharge stamp. The tribal smoke shop may only sell tax-exempt cigarettes on an Indian reservation, and it may sell tax-exempt cigarettes at retail to members of an Indian tribe recognized in this state and to the public.

Section 210.221(4), F.S., requires that each agent, wholesale dealer, or tribal business entity that purchases or sells tax-exempt cigarettes must all keep records of each transaction. It must also submit documentation to the division that contains the identity of the parties involved in the

transaction, the identity and quantity of the product sold or purchased, and any other information that the division may deem appropriate.

Section 210.221(5), F.S., provides that a member of the public who purchases or possesses more than three cartons of tax-exempt cigarettes from a tribal smoke shop within a 7-day period commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S.¹⁰ It is unclear whether the three cartons of untaxed cigarettes that are possessed during the 7-day period must have also been purchased during that period.

Tribal Smoke Shop Requirements

The bill creates s. 210.222, F.S., to provide requirements for tribal smoke shops.

Section 210.222(1), F.S., provides that the tribal smoke shop must be issued a certificate of authority to operate by a tribal business entity. The tribal business entity may charge a tribal smoke shop owner or operator a reasonable fee for the certificate of authority.

Section 210.222(2), F.S., requires that each tribal business entity must adopt written procedures and criteria for authorizing tribal smoke shops to sell tax-exempt cigarettes. The written procedures may authorize tribal smoke shops to be individually owned and operated, or owned by the tribal business entity and operated by an authorized tribal smoke shop. The written procedures must also provide for the monitoring and enforcement of the three-carton purchase limit in s. 210.221(5), F.S. At a minimum, the monitoring for a drive-through tribal smoke shop must include surveillance cameras that capture images or a video of each customer who purchases tax-exempt cigarettes and his or her car and license plate, and the recording of the driver license number of each customer who purchases tax-exempt cigarettes. The tribal smoke shop must also display a large sign inside the store that gives notice of the 3-carton limit and warns customers of the surveillance cameras in use. The tribal smoke shop must also report at least monthly to the tribal business entity any violation or attempted violation of the limits in s. 210.221(5), F.S.

The bill does not limit tribal smoke shops to drive-through facilities. The bill does not specify the monitoring and reporting requirements for tribal smoke shops that are not drive-through smoke shops.

Section 210.222(3), F.S., requires that the tribal business entity adopt written requirements establishing procedures for imposing fines against, and for suspending and revoking the certificate of authority of, a tribal smoke shop that violates or fails to adhere to the requirements in s. 210.221, F.S.

Funds Depositing Revenue from the Sale of Tax-Exempt Cigarettes

Section 210.222(4), F.S., requires the tribal business entity to deposit all cigarette revenues into a fund dedicated exclusively to funding tribal health care, including the creation of a Tribal

¹⁰ Section 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a term of imprisonment not exceeding 60 days. Section 775.083, F.S. provides that the penalty for a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

Comprehensive Tobacco Education and Use Prevention Program modeled after the program created under s. 381.84, F.S.

Section 210.222(5), F.S., requires that the accounts established by a tribal business entity that contain funds derived from tax-exempt cigarette sales must be open to inspection by the division.

Tobacco Education and Use Prevention Advisory Council

The bill amends s. 381.84(4), F.S., to add two additional members to the council. The bill requires that the two additional members of the council must be members of the Seminole Indian Tribe of Florida, one of whom must be a member of the Tribal Comprehensive Tobacco Education and Use Prevention Program.

Effective Date

The bill provides an effective date of July 1, 2014.

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:

The Revenue Estimating Conference adopted an estimate on April 11, 2014 that the bill would have no fiscal impact on cigarette tax revenues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 210.01, 210.05, and 381.84.

This bill repeals section 210.1801 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 210.221 and 210.222.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on April 10, 2014:

The committee substitute (CS) differs from the bill as follows:

The CS amends s. 210.05(5), F.S., to provide that an agent or wholesale dealer may sell stamped and untaxed cigarettes to no more than one tribal business entity per recognized Indian tribe.

The CS amends s. 210.221(2) to limit the maximum number of tax-exempt cigarettes that the tribal business entity may purchase and sell annually. The maximum amount is calculated by multiplying the number of members of the tribe by five packs of cigarettes times 365.

The CS removes tribal members from the prohibition in s. 210.221(5), F.S., against the purchase of more than three cartons of tax-exempt cigarettes from a tribal smoke shop within a 7-day period. The CS also prohibits members of the public from possessing more than three cartons of tax-exempt cigarettes from a tribal smoke shop within a 7-day period.

The CS amends s. 210.222(2), F.S., to limit the monitoring and reporting requirements only to drive-through tribal smoke shops.

The CS removes the requirement in s. 210.222(4), F.S., that three-fifths of all fees collected by a tribal business entity must be deposited into a fund to support medical clinics, to expand and create medical facilities, to purchase diagnostic equipment, to create systems that will improve the sharing of medical records by and between the various reservations, and to staff medical facilities that maintain a primary emphasis on

the needs of tribal members residing on remote reservations. The CS amends s. 210.222(4), to require the tribal business entity to deposit all cigarette revenues into a fund dedicated exclusively to funding tribal health care, including the creation of a Tribal Comprehensive Tobacco Education and Use Prevention Program modeled after the program created under s. 381.84, F.S.

The CS removes the provision in s. 210.222(5), F.S., which requires that the tribal business entity must use all profits derived from the sale of tax-exempt cigarettes to fund law enforcement, fire prevention, tribal housing, and youth recreation.

The CS amends s. 381.84(4), F.S., to add two additional members to the Tobacco Education and Use Prevention Advisory Council. The bill requires that the two additional members of the council must be members of the Seminole Indian Tribe of Florida, one of whom must be a member of the Tribal Comprehensive Tobacco Education and Use Prevention Program.

B. Amendments:

None.