

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

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

**SPONSOR(S):** Goodson

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

<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR or BUDGET/POLICY CHIEF</b>
1) Business & Professions Subcommittee	9 Y, 0 N	Butler	Anstead
2) Finance & Tax Committee			
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. Another process was established whereby tribes were provided vouchers or coupons to sell tax-free cigarettes to tribe members only.

Currently, a tribe receives vouchers or coupons to purchase tax and surcharge free cigarettes to sell to tribe members in an amount that 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, 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.

There does not appear to be 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 the most common pack of cigarettes receiving \$1 surcharge.<sup>2</sup>

Florida also charges and excise tax; the excise tax also varies based on the weight and length of the cigarettes or the quantity of cigarettes in a packaged. This tax ranges from 16.95-cents to 135.6-cents per pack, with the most common pack of cigarettes receiving a 33.9-cent tax.

Taxes are evidenced to be paid by a stamp that is affixed to each package or container of cigarettes by the manufacturer or dealer.<sup>3</sup> Dealers and manufacturers who are authorized by the Division to affix the stamps to packages of cigarettes purchase the stamps at the value of the tax and surcharge, and pass along the cost to vendors.<sup>4</sup> If a cigarette that has been stamped 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 to the public from on reservation smoke shops. 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 in Florida were provided a voucher or coupon for tax-free cigarettes to sell to their tribal members only.<sup>6</sup>

The Division provides exemption coupons to each recognized tribe in Florida in an amount that is calculated by multiplying the number of members of the tribe times five packs of cigarettes times 365.<sup>7</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> Ch. 2009-79, Laws of Fla.

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

The Indian-tax-and-surcharge-exemption coupons are provided to the tribes quarterly to be distributed by the tribe's governing body to reservation cigarette sellers.<sup>8</sup>

A reservation cigarette seller presents an Indian-tax-and-surcharge-exemption coupon to a wholesale dealer in order to purchase stamped cigarettes exempt from the imposition of the State's cigarette tax and cigarette surcharge, and the wholesale dealer submits the documentation to the Division to claim a refund on any taxes paid for stamped cigarettes sold to tribes.<sup>9</sup> A tribal member may purchase exempt cigarettes from a reservation cigarette seller even though such cigarettes have an affixed cigarette-tax-and-surcharge stamp.<sup>10</sup>

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

### **Effect of the Bill**

The bill provides that an Indian tribe may use excess Indian-tax-and-surcharge-exemption coupons for the sale of tax-and-surcharge-free cigarettes to nontribal members in purchases made on the reservation.

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

#### **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 of July 1, 2016.

## **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:**

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<sup>8</sup> s. 210.1801, F.S.

<sup>9</sup> *Id.*

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

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 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 cannot be reliably projected.

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:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.