

ENROLLED

1985 Legislature

HB 1365 2nd Engrossed

OTF TAX / CLOVE BAN

An act relating to tax on tobacco products;
creating part II of chapter 210, F.S.;
providing definitions; imposing a tax on
certain tobacco products; requiring licensure
of distributors; providing for license fees and
surety bonds; providing for revocation and
suspension of licenses; imposing a tax on
tobacco products on hand on the effective date
of the act; requiring monthly returns;
providing for a collection allowance requiring
retention of records; providing for inspection;
providing penalties; providing for refunds;
providing for disposition of tax proceeds;
providing for administration; creating s.
859.09, F.S., prohibiting clove cigarette
smoking; providing an appropriation; directing
that changes in terminology be made; providing
an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Chapter 210, Florida Statutes, is
designated part I of said chapter, and part II, consisting of
sections 210.25, 210.30, 210.35, 210.40, 210.45, 210.50,
210.52, 210.55, 210.60, 210.65, 210.67, 210.70, and 210.75, is
created to read:

210.25 Definitions.--As used in this part:

(1) "Business" means any trade, occupation, activity
or enterprise engaged in for the purpose of selling or
distributing tobacco products in this state.

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CODING: Words in struck through type are deletions from existing
law; words underlined are additions.

(2) "Consumer" means any person who has title to or possession of tobacco products in storage for use or other consumption in this state.

(3) "Division" means the Division of Alcoholic Beverages and Tobacco of the Department of Business Regulation.

(4) "Distributor" means:

(a) Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from outside the state any tobacco products for sale;

(b) Any person who makes, manufactures or fabricates tobacco products in this state for sale in this state; or

(c) Any person engaged in the business of selling tobacco outside this state who ships or transports tobacco products to retailers in this state to be sold by those retailers.

(5) "Manufacturer" means any person who manufactures and sells tobacco products.

(6) "Place of business" means any place where tobacco products are sold, manufactured, stored or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train or vending machine.

(7) "Retail outlet" means each place of business from which tobacco products are sold to consumers.

(8) "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers.

(9) "Sale" means any transfer, exchange or barter for a consideration. It includes a gift by a person engaged in the business of selling tobacco products for advertising or as a means of evading this part or for any other purpose.

(10) "Storage" means any keeping or retention of tobacco products for use or consumption in this state.

(11) "Tobacco products" means loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but "tobacco products" does not include cigarettes, as defined by s. 210.01(1), or cigars.

(12) "Use" means the exercise of any right or power incidental to the ownership of tobacco products.

(13) "Wholesale sales price" means the established price for which a manufacturer sells a tobacco product to a distributor, exclusive of any diminution by volume or other discounts.

210.30 Tax on tobacco products.--

(1) A tax is hereby imposed upon all tobacco products in this state and upon any person engaged in business as a distributor thereof, at the rate of 25 percent of the wholesale sales price of such tobacco products. Such tax shall be imposed at the time the distributor:

(a) Brings or causes to be brought into this state from without the state tobacco products for sale;

(b) Makes, manufactures, or fabricates tobacco products in this state for sale in this state; or

(c) Ships or transports tobacco products to retailers in this state, to be sold by those retailers.

(2) A tax is hereby imposed upon the use or storage by consumers of tobacco products in this state, and upon such consumers, at the rate of 25 percent of the cost of such tobacco products. The tax imposed by this subsection shall

not apply if the tax imposed by subsection (1) on such tobacco products has been paid. This tax shall not apply to the use or storage of tobacco products in quantities of less than 1 pound in the possession of any one consumer.

(3) Any tobacco product with respect to which a tax has once been imposed under this part shall not again be subject to tax under this part.

(4) No tax shall be imposed by this part upon tobacco products not within the taxing power of the state under the Commerce Clause of the United States Constitution.

(5) The exemptions provided for cigarettes under s. 210.04(4) shall also apply to tobacco products under this part.

210.35 Distributor's license required; application; out-of-state applicant.--No person shall engage in the business of selling or dealing in tobacco products as a distributor in any place of business in this state without first having received a license from the division to engage in such business at the place of business. Every application for such license shall be made on a form prescribed by the division and shall state the name and address of the applicant; if the applicant is a firm, partnership or association, the name and address of each of its members; if the applicant is a corporation, the name and address of each of its officers; the address of its principal place of business; the place where the business to be licensed is to be conducted; and such other information as the division may require for the purpose of the administration of this part. A person outside this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers, may make application for license as a distributor,

be granted such a license by the division and thereafter be subject to all the provisions of this part and entitled to act as a licensed distributor.

210.40 License fees; surety bond; application for each place of business.--Each application for a distributor's license shall be accompanied by a fee of \$25. The application shall also be accompanied by a corporate surety bond issued by a surety company authorized to do business in this state, conditioned for the payment when due of all taxes, penalties and accrued interest which may be due the state. The bond shall be in the sum of \$1,000 and in a form prescribed by the division. Whenever it is the opinion of the division that the bond given by a licensee is inadequate in amount to fully protect the state, the division shall require an additional bond in such amount as is deemed sufficient. A separate application for a license shall be made for each place of business at which a distributor proposes to engage in business as such under this part, but an applicant may provide one bond in an amount determined by the division for all applications made by the distributor.

210.45 Issuance, expiration and display of licenses; license not transferable.--Upon receipt of an application in proper form and payment of the required license fee, the division shall, unless otherwise provided by this part, issue to the applicant a license which shall permit the applicant to engage in business as a distributor at the place of business shown on the license. Each license shall expire on June 30 following its date of issue unless sooner revoked by the division, or unless the business for which the license was issued is transferred. In either case the holder of the license shall immediately surrender it to the division. Each

license shall be prominently displayed on the premises covered by the license. No license shall be transferable to any other person.

210.50 Revocation or suspension of license.--

(1) The division is authorized upon sufficient cause appearing of the violation of any of the provisions of this part by any distributor licensed under this part to revoke the license of the distributor.

(2) The division may suspend for a reasonable period of time, in its discretion, the license of any distributor issued under the provisions of this part for the same causes and under the same limitations as are authorized for license revocation.

(3) No distributor whose license for any place of business has been revoked shall engage in business under this part at such place of business after the revocation until a new license is issued to him. No distributor whose license for any place of business has been revoked shall be permitted to have the license renewed, or to obtain an additional license for any other place of business, for a period of 6 months after the date such revocation becomes final.

(4) In lieu of the suspension or revocation of licenses, the division may impose civil penalties against holders of licenses for violations of this part or rules relating thereto. No civil penalty so imposed shall exceed \$1,000 for each offense, and all amounts collected shall be deposited with the State Treasurer to the credit of the General Revenue Fund. If the holder of the license fails to pay the civil penalty, his license shall be suspended for such period of time as the division may specify.

210.52 Report of and tax on tobacco products on hand July 1, 1985.--On or before July 15, 1985, each distributor having a place of business in this state shall file a report with the division in such form as the division may prescribe, showing the tobacco products on hand at 12:01 a.m. on July 1, 1985. A tax at a rate equal to 25 percent of the wholesale sales price of such tobacco products is hereby imposed upon such tobacco products and shall be due and payable on or before July 15, 1985.

210.55 Distributors; monthly returns.--

(1) On or before the 10th of each month, every taxpayer with a place of business in this state shall file a return with the division showing the quantity and taxable price of each tobacco product brought, or caused to be brought, into this state for sale; or made, manufactured or fabricated in this state for sale in this state, during the preceding month. Every taxpayer outside this state shall file a return showing the quantity and taxable price of each tobacco product shipped or transported to retailers in this state to be sold by those retailers during the preceding month. Returns shall be made upon forms furnished and prescribed by the division and shall contain any other information that the division requires. Each return shall be accompanied by a remittance for the full tax liability shown.

(2) As soon as practicable after any return is filed, the division shall examine each return and correct it, if necessary, according to its best judgment and information. If the division finds that any amount of tax is due from the taxpayer and unpaid, it shall notify the taxpayer of the deficiency, stating that it proposes to assess the amount due together with interest and penalties. If a deficiency

disclosed by the division's examination cannot be allocated to one or more particular months, the division shall notify the taxpayer of the deficiency, stating its intention to assess the amount due for a given period without allocating it to any particular months.

(3) If, within 60 days after the mailing of notice of the proposed assessment, the taxpayer files a protest to the proposed assessment and requests a hearing on it, the division shall give notice to the taxpayer of the time and place fixed for the hearing, shall hold a hearing on the protest and shall issue a final assessment to the taxpayer for the amount found to be due as a result of the hearing. If a protest is not filed within 60 days, the division shall issue a final assessment to the taxpayer. In any action or proceeding in respect to the proposed assessment the taxpayer shall have the burden of establishing the incorrectness or invalidity of any final assessment made by the division.

(4) If any taxpayer required to file any return fails to do so within the time prescribed, the taxpayer shall, on the written demand of the division, file the return within 20 days after mailing of it and at the same time pay the tax due on its basis. If the taxpayer fails within that time to file the return, the division shall prepare the return from its own knowledge and from the information that it obtains and on that basis shall assess a tax, which shall be paid within 10 days after the division has mailed to the taxpayer a written notice of the amount and a demand for its payment. In any action or proceeding in respect to the assessment, the taxpayer shall have the burden of establishing the incorrectness or invalidity of any return or assessment made by the division because of the failure of the taxpayer to make a return.

(5) All taxes are due not later than the 10th day of the month following the calendar month in which they were incurred, and thereafter shall bear interest at the annual rate of 12 percent. If the amount of tax due for a given period is assessed without allocating it to any particular month, the interest shall begin with the date of the assessment.

(6) In issuing its final assessment, the division shall add to the amount of tax found due and unpaid a penalty of 10 percent, but if it finds that the taxpayer has made a false return with intent to evade the tax, the penalty shall be 50 percent of the entire tax as shown by the corrected return. In assessing a tax on the basis of a return made under subsection (4), the division shall add to the amount of tax found due and unpaid a penalty of 25 percent.

(7) For the purpose of compensating the distributor for the keeping of prescribed records and the proper accounting and remitting of taxes imposed under this part, the distributor shall be allowed 1 percent of the amount of the tax due and accounted for and remitted to the division, in the form of a deduction in submitting his report and paying the amount due by him; and the division shall allow such deduction of 1 percent of the amount of the tax to the person paying the same for remitting the tax in the manner herein provided, for paying the amount due to be paid by him, and as further compensation to the distributor for the keeping of prescribed records and for collection of taxes and remitting the same.

(a) The collection allowance may not be granted, nor may any deduction be permitted, if the tax is delinquent at the time of payment.

(b) The division may reduce the collection allowance by 10 percent or \$50, whichever is less, if a taxpayer files an incomplete return.

1. An "incomplete return" is, for purposes of this part, a return which is lacking such uniformity, completeness, and arrangement that the physical handling, verification, or review of the return may not be readily accomplished.

2. The division shall adopt rules requiring such information as it may deem necessary to ensure that the tax levied hereunder is properly collected, reviewed, compiled, and enforced, including, but not limited to: the amount of taxable sales; the amount of tax collected or due; the amount claimed as the collection allowance; the amount of penalty and interest; the amount due with the return; and such other information as the division may specify.

210.60 Books, records and invoices to be kept and preserved; inspection by agents of division.--Every distributor shall keep in each licensed place of business complete and accurate records for that place of business, including itemized invoices of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made, except sales to an ultimate consumer. Such records shall show the names and addresses of purchasers, and other pertinent papers and documents relating to the purchase, sale or disposition of tobacco products. When a licensed distributor sells tobacco products exclusively to ultimate consumers at the addresses given in the license, no invoice of those sales shall be required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or

controlled by that licensed distributor. All books, records and other papers and other documents required by this section to be kept shall be preserved for a period of at least 3 years after the date of the documents, as aforesaid, or the date of the entries thereof appearing in the records, unless the division, in writing, authorizes their destruction or disposal at an earlier date. At any time during usual business hours, duly authorized agents or employees of the division may enter any place of business of a distributor and inspect the premises, the records required to be kept under this part, and the tobacco products contained therein, to determine whether all the provisions of this part are being fully complied with. Refusal to permit such inspection by a duly authorized agent or employee of the division shall be grounds for revocation of the license. Every person who sells tobacco products to persons other than an ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. He or she shall preserve legible copies of all such invoices for 3 years from the date of sale. Every retailer shall produce itemized invoices of all tobacco products purchased. The invoices shall show the name and address of the seller and the date of purchase. The retailer shall preserve a legible copy of each such invoice for 3 years from the date of purchase. Invoices shall be available for inspection by authorized agents or employees of the division at the retailer's place of business.

210.65 Penalties for tax evasion.--Any distributor or any other person who fails, neglects or refuses to comply with, or violates the provisions of, this part of the rules promulgated by the division under this part, is guilty of a

misdeemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any retailer who purchases tobacco products from a distributor not licensed under the provisions of this part is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any distributor or any other person who has been convicted of a violation of this part and is thereafter convicted of a further violation of this part, shall, upon conviction of said further offense, be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

210.67 Refunds.--Where tobacco products, on which the tax imposed by this part has been reported and paid, or which have been reported for the purpose of determining and imposing the tax for the privilege of doing business under the provisions of this part and on which the tax has been paid, are sold, shipped or transported by the distributor to retailers, distributors or ultimate consumers outside the state, or are returned to the manufacturer by the distributor, or destroyed by the distributor, a refund or credit of such tax shall be made to the distributor.

210.70 Disposition of funds.--As collections are received by the division from the taxes and license fees imposed under this part, it shall pay the same into the General Revenue Fund.

210.75 Administration.--The division, under the applicable rules of the Department of Administration, shall have the power to employ such employees and assistants and incur such other expenses as may be necessary for the administration of this part, within the limits of an appropriation for the operation of the Department of Business

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Regulation as may be authorized by the General Appropriations Act. The division is authorized to prescribe and promulgate rules it may deem necessary to implement and enforce this part.

Section 2. Section 859.09 is created to read:

859.09 Prohibition against clove cigarettes.--No person shall sell, use, possess, give away or otherwise dispose of cigarettes or similar products designed or intended for smoking, made in whole or in part from, or containing, cloves, clove oil, eugenol or any derivative thereof.

Section 3. There is hereby appropriated in fiscal year 1985-1986 to the Division of Alcoholic Beverages and Tobacco 13 positions and \$230,528.00 from the General Revenue Fund for the administration of this act.

Section 4. In editing manuscript for the next edition of the Florida Statutes, the Statutory Revision Division of the Joint Legislative Management Committee shall change "chapter" to "part" wherever it appears in part I of chapter 210, Florida Statutes.

Section 5. This act shall take effect July 1, 1985.

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