



**Agenda Item No. 4
September 4, 2013 Meeting**

DATE: August 27, 2013

TO: Children and Families Commission of Orange County

FROM: Christina Altmayer, Executive Director 

SUBJECT: Provide Direction related to Prevent All Cigarette Trafficking (PACT) Act Legislation

SUMMARY:

The Commission has previously received public comments about how the PACT Act ensures tax collection on Internet and remote sellers of cigarettes and smokeless tobacco but that cigars are exempt from these provisions. The PACT Act was enacted into law effective June 2010 and amended the Jenkins Act, 15 U.S.C. Chapter 10A, which governs the collection of taxes on cigarettes and other tobacco products and requires sellers of tobacco products to register with the federal government. Cigars are excluded from these requirements. This exemption may have a negative impact on Proposition 10 revenues from limitations on the ability of the State Board of Equalization to collect tobacco taxes.

The item has been presented to the Commission to consider outreaching to the local federal delegation to inform the elected officials of the negative impact of the PACT Act and request their support in pursuing the elimination of the cigar exemption.

BACKGROUND:

In response to public inquiries, Commission staff attempted to estimate the potential loss of revenue due to the cigar exemption. While consumption of cigarettes decreased 32.8% from 2000 to 2011, consumption of loose tobacco and cigars increased 123.1% over the same period. The data suggest that certain smokers have switched from cigarettes to other combustible tobacco products (including cigars). Since 2000, there has been an increase of large cigar consumption of 233.1%.

Currently, there is limited capacity for enforcement of tax requirements on cigar sales or the capacity to estimate the revenue. California law requires purchasers of cigars from an out of state company to pay the current state tobacco tax rate. The California State Board of Equalization can audit personal income tax returns in conjunction with out of state cigar retailers/mail order warehouse records to determine if unpaid taxes are due, but limited enforcement is done on approach. Currently, no method exists for measuring or estimating illicit or untaxed tobacco trade in the United States. The Federal PACT Act would need to be amended to remove the exemption in order to require remote sellers to register their sales with the Board of Equalization.

Commissioners

Executive Director

The Commission has considered this item as part of public comments and the Executive Officer's report on multiple occasions. Since the Commission is not directly funding lobbyists, and has not historically adopted a federal or state policy agenda, staff has been working with the First 5 Association and First 5 LA to incorporate this issue as part of their policy agenda. First 5 LA has been working collaboratively with staff to monitor this issue through their federal lobbyist. Staff continues to promote awareness of this issue through these partnerships.

Staff is prepared to take any follow-up actions, as directed by the Commission. For example, if directed, staff can develop letters to the Orange County federal delegation informing them of the impact of this exemption on Proposition 10 tobacco tax revenue collection and request their support for Congressional reconsideration of the exemption. As directed by the Commission, the letter would summarize the provisions of the PACT Act, the related exemption for cigars, and the negative impact on funding for programs supported by the Children and Families Commission.

STRATEGIC PLAN & FISCAL SUMMARY:

Implementation of this action has no immediate financial impact.

PRIOR COMMISSION ACTIONS:

- February 2013 – Executive Officer's Report
- November 2012 – Executive Officer's Report

RECOMMENDED ACTION:

Provide direction to staff on potential actions related to the PACT Act cigar exemption.

Contact: Christina Altmayer