

STORAGE NAME: h0793a.brc

DATE: March 17, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
ANALYSIS**

BILL #: HB 793

RELATING TO: Tax on sales, use, and other transactions

SPONSOR(S): Representative Prieguez

COMPANION BILL(S): SB 1918(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 9 NAYS 0
 - (2) FINANCE & TAXATION
 - (3) GENERAL GOVERNMENT APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

When credit purchases are made, the retailer must immediately pay the state the sales tax charged, but not yet collected. However, if a person defaults on a debt, the retailer loses the amount of the unpaid sale plus the amount of unpaid tax. The Florida Statutes hold the retailer responsible only for sales tax on money that is actually collected. Accordingly, the retailer is allowed to take a tax credit for the sales tax paid on the amount of the bad debt. The retailer claims the tax credit after the retailer has written the bad debt off of its federal taxes.

A flaw exists in current law relative to when a retailer uses a bank for the private label card. This is because the account is written off of the taxes of the bank and not the retailer. The statute authorizes the retailer to take the tax credit when the retailer writes off the bad debt. In the case of the private label card bank, the bank writes off the bad debt, yet the retailer must claim the tax credit. The statute allows the retailer to claim the tax credit when the retailer writes the debt off its taxes.

The Department of Revenue currently allows the retailer to claim the tax credit in these circumstances. The bill seeks to place into law a provision that specifically allows a retailer to claim the tax credit on a bad debt written off by the private label credit bank. This would codify the way the Department of Revenue currently awards tax credits and preserves the intent that sales taxes are only to be paid on money that is actually collected.

The Department of Revenue has indicated that the bill will not change the way that tax credits are awarded in these circumstances. However, the Revenue Estimating Conference has slated the bill for analysis and the Finance and Taxation Committee will add the final fiscal impact analysis.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Pursuant to Chapter 212, F.S., sales tax becomes due at the time of purchase. The tax is based on the total purchase price of taxable goods, regardless of whether payment is made immediately or on credit. When purchases are made on credit, the tax due is remitted by the dealer to the state based on the total price charged. The retailer advances the tax to the state prior to its actual collection from the customer. However, it is the intent of the legislature that sales and use tax only be assessed to the extent of actual payment. Therefore, in the case of bad debts and worthless accounts, retailers are permitted a tax credit for the portion of taxable purchases that are not collected. Section 212.17(3), F.S., allows retailers to take tax credits when the dealer writes off a worthless account for federal tax purposes. This provision is implemented by Rule 12A-1.012, F.A.C.

The operation of the statute and rule cited above is unclear where a retailer offers credit through a private label credit agreement with a bank. There are at least two types of credit arrangements that are typically referred to as private label credit cards. One is where a retailer operates an in-house credit department and offers credit, owns the account and services the customer directly. Under this arrangement, there is no question as to the operation of s. 212.17(3), F.S., since the retailer both writes off the bad debt for federal tax purposes and takes the tax credit. The second scenario is where a credit card bank contracts with the retailer to provide credit services to the retailer's customers under the name to the retailer but the account is truly owned by the bank. In this instance, it is unclear under the statute whether it is permissible for the retailer to take the tax credit since the bank actually charges off the debt for federal tax purposes and the retailer takes the tax credit.

The Department of Revenue now gives the tax credit to the retailer as the remitter of the tax. However, the bank is the one writing off the debt for federal tax purposes. Ultimately, the division of the loss on the worthless account and the allocation of the tax credit between the retailer and the bank are points contemplated by them in their private label credit agreement.

B. EFFECT OF PROPOSED CHANGES:

The Department of Revenue currently allows the retailer to claim the tax credit in these circumstances. The bill seeks to place into law a provision that specifically allows a retailer to claim the tax credit on a bad debt written off by the private label credit bank. This would codify the way the Department of Revenue currently awards tax credits and preserves the intent that sales taxes are only to be paid on money that is actually collected.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Rule 12A-1.012, F.A.C., is written to the language of s. 212.17(3), F.S. The amended language of the statute may need to be further defined by rule.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

The retailer would be entitled by statute to the tax credit available on bad debts that are charged off by a bank servicing a private label credit card agreement.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 212.17 (3), Florida Statutes

E. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Please see comments.

2. Recurring Effects:

Please see comments.

3. Long Run Effects Other Than Normal Growth:

Please see comments.

4. Total Revenues and Expenditures:

Please see comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

Retailers will be entitled to tax credits on worthless accounts charged off by banks servicing private label credit card agreements where this practice is not expressly authorized by current statute.

3. Effects on Competition, Private Enterprise and Employment Markets:

None

D. FISCAL COMMENTS:

The Department of Revenue has indicated that the bill will not change the way that tax credits are awarded in these circumstances. However, the Revenue Estimating Conference has slated the bill for analysis and the Finance and Taxation Committee will add the final fiscal impact analysis.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

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A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. **COMMENTS:**

Marsha Cantrell appeared before the Business Regulation and Consumer Affairs Committee, on behalf of Nationsbank, and stated that there may be an interpretation of this bill that is contrary to the sponsor's stated intent. Therefore, banking interests will need to examine the issue more closely and work with the sponsor.

Bebe Blount of the Department of Revenue stated that the department does not agree that this legislation clarifies current law and would like to speak with the Comptroller's office and the sponsor to resolve this point.

VI. **AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

On March 17, 1999, the Business Regulation and Consumer Affairs Committee adopted three amendments, without objection. The amendments are traveling with the bill. The first is technical and conforms the bill to the Senate companion. The second amendment provides a definition for "private label credit card agreement" to clarify intent. The last provides intent language to conform the bill to the Senate companion, although, there is a difference in that the bills do not have identical directories.

VII. **SIGNATURES:**

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

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