

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill increases the rulemaking authority of the Department of Revenue.

Ensure lower taxes – The bill authorizes a credit or refund of sales taxes associated with private label credit card accounts found to be worthless as a bad debt. It decreases state and local revenues.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida law imposes a sales tax on the customer or purchaser. Dealers who sell on credit are required to remit the calculated sales tax to the State at the time of the sale.

The Department of Revenue is authorized to provide a sales tax credit or sales tax refund to dealers on unpaid accounts that have been charged off as bad debts for federal income tax purposes. The dealer must take the tax credit or refund within 12 months following the month in which the unpaid accounts are charged off for federal income tax purposes.¹

The dealer is the only entity allowed to take a credit or seek a refund. Financial institutions and other lenders that offer traditional credit or debit cards are not eligible for sales tax credits or refunds for worthless accounts, nor are retailers and lenders who have partnered to offer “private label credit cards” and “co-branded credit cards” to consumers, and are writing off bad debts for federal tax purposes.

Private label credit cards are generally defined as credit cards that have been branded with a specific retailer’s or company’s name and logo.² Even though the name of a retailer or other business is on the front of the card, another company typically manages the issuing and processing of the accounts. Within the last decade, a significant number of retailers who used to have in-house credit cards (such as Sears and Circuit City) have divested themselves of managing their credit accounts and outsourced them to financial institutions such as Citibank Commerce, GE Consumer Finance Bank, and HSBC. The private-label credit card industry is valued at \$106 billion.³

Co-branded credit cards are a subset of private label credit cards. It is a credit card where a retailer’s or business’ name and logo are displayed prominently, but in the bottom corner there is an American Express, Visa, MasterCard, or Discover logo. These cards can be used to purchase items or services from a retailer, as well as anyplace else that accepts the third-party issuer.⁴

New York, California, and Georgia are among the states taking steps to allow entities engaged in private label credit cards to claim tax exemptions on unpaid accounts that have been charged off as bad debts for federal income tax purposes.

Effect of Proposed Changes

This bill allows a dealer or lender to take a credit or obtain a sales tax refund on the unpaid balance due on worthless private label credit card accounts, when those accounts are found to be worthless

¹ Section 212.17(3), F.S.

² See definition at www.creditorweb.com (site last visited May 19, 2007).

³ Senate Professional Staff Analysis and Economic Impact Statement for SB 982, March 5, 2007, at 2.

⁴ *Id.*

and are deductible as bad debts for federal income tax purposes. The dealer or lender must make a proper election and meet the following conditions:

- No credit or refund was previously claimed or allowed on any portion of the account;
- The accounts have been found to be worthless and are deductible as bad debts for federal income tax purposes by the lender or any entity affiliated with the lender under 26 U.S.C. § 1504; and
- The accounts are found to be worthless on or after July 1, 2007, and the credit or refund is claimed not later than 12 months following the date on which the federal income tax return on which the amounts were deducted was filed.

If the dealer or lender subsequently collects in whole or in part any account for which a credit or refund has been obtained, the dealer or lender shall include the amount collected and account for tax on that amount in the earlier of its first return or refund claim filed after the collection, or in a statement filed with the Department of Revenue (DOR) by the 20th day of the month following the month in which the amount was collected.

This bill requires the dealer and the lender to file a joint election with DOR prior to taking any credit or obtaining any refund. The election must be signed by both parties, must designate which party is entitled to claim the credit or refund, and may not be revoked unless a written notice, signed by the parties who signed the original election, is filed with the DOR.

This bill also requires the dealer or lender to maintain adequate books and records. The dealer or lender may use an apportionment method to substantiate the amount of Florida tax, if the dealer remits sales tax or use tax to Florida and one or more other states. The apportionment method must use the dealer's Florida and non-Florida sales, the dealer's taxable and nontaxable sales, and the amount of tax remitted to Florida. Alternatively, the dealer or lender may treat a specified percentage of private label credit accounts as giving rise to a credit or refund under this section. The percentage will be derived from a sampling of the dealer's or lender's records in accordance with a methodology agreed on by the dealer or lender and DOR.

A lender may claim a bad debt credit on a consolidated return.

The bill provides definitions of "lender,"⁵ "private label credit card,"⁶ and "dealer's affiliate."⁷

The provisions of the bill do not apply to credits or refunds presented under s. 212.17(2) or (3), F.S., or to any assessment or refund denial pertaining to credits or refunds under those subsections, or to any audit or administrative or judicial proceeding relating to credits or refund claims pending as of July 1, 2007.

C. SECTION DIRECTORY:

Section 1 amends s. 212.17, F.S., allowing for a credit or refund of the sales taxes associated with private label credit card accounts found to be worthless and deductible as a bad debt for federal income tax purposes.

Section 2 provides an effective date of July 1, 2007.

⁵ "Lender" means any of the following: Any person who owns or has owned a private label credit card account that the person purchased directly from a dealer who remitted the tax imposed under this chapter; Any person who owns or has owned a private label credit card account pursuant to that person's contract directly with the dealer who remitted the tax imposed under this chapters; or Any person who is an affiliated entity, under 26 U.S.C. §1504, of a person described in subparagraph 1 or subparagraph 2 or an assignee or other transferee of a person described in subparagraph 1 or 2.

⁶ "Private label credit card" means any charge card or credit card that carries, refers to, or is branded with the name or logo of a dealer and can be used for purchases from the dealer whose name or logo appears on the card or for purchases from any of the dealer's affiliates.

⁷ "Dealer's affiliates" means all entities affiliated with the dealer under 26 U.S.C. § 1504.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has estimated that this bill will have the following negative fiscal impact on state government:

	<u>2007-08</u>	<u>2008-09</u>
General Revenue	(\$7.3m)	(\$8.3m)
State Trust	<u>(Insignificant)</u>	<u>(Insignificant)</u>
Total	(\$7.3m)	(\$8.3m)

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has estimated that this bill will have the following negative fiscal impact on local governments:

	<u>2007-08</u>	<u>2008-09</u>
Revenue Sharing	(\$.2m)	(\$.3m)
Local Gov't. Half Cent	(\$.7m)	(\$.8m)
Local Option	<u>(\$.7m)</u>	<u>(\$.8m)</u>
Total Local Impact	(\$1.6m)	(\$1.9m)

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may positively impact the private label credit card lenders and dealers that currently are ineligible to receive this tax credit or refund.

D. FISCAL COMMENTS:

It does not appear that the original estimate of the Revenue Estimating Conference contemplated issuers of private label credit cards seeking refunds for periods prior to the effective date of the act. The current statute of limitations for refunds of bad debts is 12 months after they are charged off for federal income tax purposes.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not reduce the authority that municipalities have to raise revenue. Therefore the provisions of subsections 18(a) and (c) of Article VII of the State Constitution, do not apply.

The bill appears to reduce the authority that municipalities and counties have to raise revenues in the aggregate; however, the amount is insignificant and the provisions of subsection (b) do not apply.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Revenue is granted rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Department of Revenue Implementation

Section 1 of the bill allows for a credit or refund to be claimed no later than 12 months following the date on which the federal income tax return on which the accounts were deducted was filed. This is contrary to s. 212.17(3), F.S., which requires credits or refunds for bad debt accounts to be claimed within 12 months following the date on which the bad debts have been charged off for federal income tax purposes. The Department of Revenue has previously determined that "charged off for federal income tax purposes" means the date that such accounts are written off the dealer's books and records, and is not to be determined by the filing date of the dealer's federal income tax return.⁸

Allowing the filing date of the federal income tax return to be used to calculate the period during which a credit or refund is available may result in an extended period of time in which such credit or refund can be taken, as the dealer or lender may file extensions and/or amendments to the federal return. Allowing the use of the date on which a federal income tax return is filed for private label credit card accounts may also result in disparate treatment for taxpayers that are not required to file federal income tax returns, as they will be held to a strict 12-months statute of limitations and may not avail themselves of a longer time period by virtue of any extensions or amendments applicable to their federal income tax returns.⁹

D. STATEMENT OF THE SPONSOR

This legislation updates Florida's tax code to bring it in line with current business practices so that bad debts or defaults are treated equally between revolving credit accounts and private label credit accounts. The current glitch in the law allows the state to keep money the statute never intended it to keep when a customer defaults on his or her account. Texas, California, New York and Georgia have now passed similar legislation updating their state sales tax codes.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 21, 2007, the Committee on State Affairs heard HB 307 and reported it favorably with two amendments. Amendment 1 requires the tax credit or refund to be claimed not later than 12 months following the date on which the accounts are charged off for federal income tax purposes. This addresses a drafting concern raised by the Department of Revenue. In addition, the amendment minimizes the immediate fiscal impact to the State by phasing in the bill's provision over four years. The amendment provides for implementation of the tax credit/refund as follows:

- Beginning January 1, 2008, the credit or refund shall be 25 percent of the tax paid.
- Beginning January 1, 2009, the credit or refund shall be 50 percent of the tax paid.
- Beginning January 1, 2010, the credit or refund shall be 75 percent of the tax paid.
- Beginning January 1, 2011, the credit or refund shall be 100 percent of the tax paid.

Amendment 2 pushes back the effective date of the act to January 1, 2008.

⁸ Id.

⁹ Id.

The Revenue Estimating Conference has estimated that this bill as amended will have a negative recurring fiscal impact on the General Revenue Fund due to loss of state sales tax revenue. State annualized general revenue losses for fiscal year 2007-08 are estimated to be \$8.0 million and cash general revenue losses for fiscal year 2010-11 is estimated to be \$7.8 million. Local annualized revenue losses for fiscal year 2007-08 are estimated to be \$1.9 million and cash local revenue losses for fiscal year 2010-2011 are estimated to be \$1.7 million.