

A bill to be entitled

An act relating to sales and use tax credits or refunds; amending s. 212.17, F.S.; authorizing dealers to take certain credits or obtain refund of taxes paid for worthless private label credit card accounts; specifying conditions; providing for remittances of taxes collected on such accounts; providing definitions; requiring dealers and lenders to file a joint election to receive the credit or refund; providing recordkeeping requirements; authorizing the Department of Revenue to adopt rules; specifying nonapplication to certain claims for credits or refunds; providing an effective date.

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

Section 1. Subsection (8) is added to section 212.17, Florida Statutes, to read:

212.17 Credits for returned goods, rentals, or admissions; goods acquired for dealer's own use and subsequently resold; worthless private label credit card accounts; additional powers of department.--

(8) (a) In the case of private label credit card accounts found to be worthless and deductible as bad debts for federal income tax purposes, a dealer or lender may take a credit or obtain a refund of the taxes previously paid by the dealer under this chapter on the unpaid balance due on the worthless accounts if a proper election is made by the dealer and lender and the following conditions are met:

29 1. No credit or refund was previously claimed or allowed  
30 on any portion of the account.

31 2. The accounts have been found worthless and are  
32 deductible as bad debts for federal income tax purposes by the  
33 lender or any entity affiliated with the lender under 26 U.S.C.  
34 s. 1504.

35 3. The accounts are found to be worthless on or after July  
36 1, 2007, and the credit or refund is claimed not later than 12  
37 months following the date on which the federal income tax return  
38 on which the accounts were deducted was filed.

39 (b) If a dealer or lender thereafter collects in whole or  
40 in part any account for which a credit or refund has been  
41 obtained under this subsection, the dealer or the lender shall  
42 include the amount collected and account for tax on that amount  
43 in the earlier of the dealer's or lender's first return or  
44 refund claim filed after the collection or a statement filed  
45 with the department by the 20th day of the month following the  
46 month in which the amount was collected.

47 (c) For purposes of this subsection, the term "lender"  
48 means any of the following:

49 1. Any person who owns or has owned a private label credit  
50 card account that the person purchased directly from a dealer  
51 who remitted the tax imposed under this chapter;

52 2. Any person who owns or has owned a private label credit  
53 card account pursuant to that person's contract directly with  
54 the dealer who remitted the tax imposed under this chapter; or

55 3. Any person who is an affiliated entity, under 26 U.S.C.  
56 s. 1504, of a person described in subparagraph 1. or

57 subparagraph 2. or an assignee or other transferee of a person  
58 described in subparagraph 1. or subparagraph 2.

59 (d) For purposes of this subsection, the term "private  
60 label credit card" means any charge card or credit card that  
61 carries, refers to, or is branded with the name or logo of a  
62 dealer and can be used for purchases from the dealer whose name  
63 or logo appears on the card or for purchases from any of the  
64 dealer's affiliates. For purposes of this paragraph, the term  
65 "dealer's affiliates" means all entities affiliated with the  
66 dealer under 26 U.S.C. s. 1504. In the case of a private label  
67 credit card that also may be used to make purchases from persons  
68 other than the dealer whose name or logo appears on the card or  
69 the dealer's affiliates, the sales receipts of the dealer and  
70 the dealer's affiliates must be capable of identification apart  
71 from any receipts reflecting sales by such unrelated persons.  
72 Nothing in this subsection authorizes any credit or refund with  
73 respect to sales by such unrelated persons.

74 (e) Before a dealer or lender may take a credit or obtain  
75 a refund under this subsection, the lender and the dealer shall  
76 file a joint election with the department, signed by the dealer  
77 and lender, designating whether the dealer or lender is entitled  
78 to claim the credit or refund. This election may not be revoked  
79 unless a written notice, signed by the dealer and lender who  
80 signed the election being revoked, is filed with the department.

81 (f) The dealer or lender shall maintain adequate books,  
82 records, or other documentation supporting the deduction taken  
83 for the bad debts found to be worthless for which a credit was  
84 taken or a refund was claimed under this subsection. If a dealer

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85 remits sales tax or use tax to this state and one or more other  
86 states, the dealer or its lender claiming any credits or refunds  
87 under this subsection may use an apportionment method to  
88 substantiate the amount of tax imposed under this chapter  
89 included in the bad debts to which the credit or refund applies.  
90 The apportionment method must use the dealer's Florida and non-  
91 Florida sales, the dealer's taxable and nontaxable sales, and  
92 the amount of tax the dealer remitted to this state.  
93 Alternatively, the dealer or lender may treat a specified  
94 percentage of the private label credit card accounts as giving  
95 rise to a credit or refund under this subsection, which  
96 percentage is derived from a sampling of the dealer's or  
97 lender's records in accordance with a methodology agreed upon by  
98 the department and the dealer or lender.

99 (g) A lender as defined in paragraph (c) may have its  
100 credit for bad debts claimed on a consolidated sales and use tax  
101 return.

102 (h) The department may adopt rules pursuant to ss.  
103 120.536(1) and 120.54 governing the implementation of this  
104 subsection.

105 (i) This subsection shall not apply to any credit or  
106 refund claim presented under subsection (2) or subsection (3),  
107 any assessment or refund denial pertaining to a credit or refund  
108 claim made under subsection (2) or subsection (3), or any audit  
109 or administrative or judicial proceeding relating to such credit  
110 or refund claims pending as of July 1, 2007.

111 Section 2. This act shall take effect July 1, 2007.