

By Senator Haridopolos

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1 A bill to be entitled

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

13
14 Be It Enacted by the Legislature of the State of Florida:

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16 Section 1. Section 212.17, Florida Statutes, is amended to
17 read:

18 212.17 Credits for returned goods, rentals, or admissions;
19 goods acquired for dealer's own use and subsequently resold;
20 worthless private-label credit card accounts; additional powers
21 of department.--

22 (1) (a) In the event purchases are returned to a dealer by
23 the purchaser or consumer after the tax imposed by this chapter
24 has been collected from or charged to the account of the consumer
25 or user, the dealer shall be entitled to reimbursement of the
26 amount of tax collected or charged by the dealer, in the manner
27 prescribed by the department.

28 (b) A registered dealer that purchases property for the
29 dealer's own use, pays tax on acquisition, and sells the property

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30 subsequent to acquisition without ever having used the property
31 is entitled to reimbursement, in the manner prescribed by the
32 department, of the amount of tax paid on the property's
33 acquisition.

34 (c) If the tax has not been remitted by a dealer to the
35 department, the dealer may deduct the same in submitting his or
36 her return upon receipt of a signed statement of the dealer as to
37 the gross amount of such refunds during the period covered by
38 said signed statement, which period shall not be longer than 90
39 days. The department shall issue to the dealer an official credit
40 memorandum equal to the net amount remitted by the dealer for
41 such tax collected or paid. Such memorandum shall be accepted by
42 the department at full face value from the dealer to whom it is
43 issued, in the remittance for subsequent taxes accrued under the
44 provisions of this chapter. If a dealer has retired from business
45 and has filed a final return, a refund of tax may be made if it
46 can be established to the satisfaction of the department that the
47 tax was not due.

48 (2) A dealer who has paid the tax imposed by this chapter
49 on tangible personal property sold under a retained title,
50 conditional sale, or similar contract, or under a contract
51 wherein the dealer retains a security interest in the property
52 pursuant to chapter 679, may take credit or obtain a refund for
53 the tax paid by the dealer on the unpaid balance due him or her
54 when he or she repossesses (with or without judicial process) the
55 property within 12 months following the month in which the
56 property was repossessed. When such repossessed property is
57 resold, the sale is subject in all respects to the tax imposed by
58 this chapter.

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59 (3) A dealer who has paid the tax imposed by this chapter
60 on tangible personal property or services may take a credit or
61 obtain a refund for any tax paid by the dealer on the unpaid
62 balance due on worthless accounts within 12 months following the
63 month in which the bad debt has been charged off for federal
64 income tax purposes. If any accounts so charged off for which a
65 credit or refund has been obtained are thereafter in whole or in
66 part paid to the dealer, the amount so paid shall be included in
67 the first return filed after such collection and the tax paid
68 accordingly.

69 (4) (a) The department shall design, prepare, print and
70 furnish to all dealers, except dealers filing through electronic
71 data interchange, or make available or prescribe to the dealers,
72 all necessary forms for filing returns and instructions to ensure
73 a full collection from dealers and an accounting for the taxes
74 due, but failure of any dealer to secure such forms does not
75 relieve the dealer from the payment of the tax at the time and in
76 the manner provided.

77 (b) The department shall prescribe the format and
78 instructions necessary for filing returns in a manner that is
79 initiated through an electronic data interchange to ensure a full
80 collection from dealers and an accounting for the taxes due. The
81 failure of any dealer to use such format does not relieve the
82 dealer from the payment of the tax at the time and in the manner
83 provided.

84 (5) The department and its assistants are hereby authorized
85 and empowered to administer the oath for the purpose of enforcing
86 and administering the provisions of this chapter.

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87 (6) The department has authority to adopt rules pursuant to
88 ss. 120.536(1) and 120.54 to enforce the provisions of this
89 chapter.

90 (7) The department, where admissions, license fees, or
91 rental payments or payments for services are made and thereafter
92 returned to the payors after the taxes thereon have been paid,
93 shall return or credit the taxpayer for taxes so paid on the
94 moneys returned in the same manner as is provided for returns or
95 credits of taxes where purchases or tangible personal property
96 are returnable to a dealer.

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

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

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

110 3. The accounts are found to be worthless on or after July
111 1, 2008, and the credit or refund is claimed not later than 12
112 months following the date on which the accounts are charged off
113 for federal income tax purposes.

114 (b) If a dealer or lender thereafter collects in whole or
115 in part any account for which a credit or refund has been

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116 obtained under this subsection, the dealer or the lender shall
117 include the amount collected and account for tax on that amount
118 in the earlier of the dealer's or lender's first return or refund
119 claim filed after the collection or a statement filed with the
120 department by the 20th day of the month following the month in
121 which the amount was collected.

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

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

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

130 3. Any person who is an affiliated entity, under 26 U.S.C.
131 s. 1504, of a person described in subparagraph 1. or subparagraph
132 2. or an assignee or other transferee of a person described in
133 subparagraph 1. or subparagraph 2.

134 (d) For purposes of this subsection, the term "private-
135 label credit card" means any charge card or credit card that
136 carries, refers to, or is branded with the name or logo of a
137 dealer and can be used for purchases from the dealer whose name
138 or logo appears on the card or for purchases from any of the
139 dealer's affiliates. For purposes of this paragraph, the term
140 "dealer's affiliates" means all entities affiliated with the
141 dealer under 26 U.S.C. s. 1504. In the case of a private-label
142 credit card that also may be used to make purchases from persons
143 other than the dealer whose name or logo appears on the card or
144 the dealer's affiliates, the sales receipts of the dealer and the

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145 dealer's affiliates must be capable of identification apart from
146 any receipts reflecting sales by such unrelated persons. This
147 subsection does not authorize any credit or refund with respect
148 to sales by such unrelated persons.

149 (e) Before a dealer or lender may take a credit or obtain a
150 refund under this subsection, the lender and the dealer shall
151 file a joint election with the department, signed by the dealer
152 and lender, designating whether the dealer or lender is entitled
153 to claim the credit or refund. This election may not be revoked
154 unless a written notice, signed by the dealer and lender who
155 signed the election being revoked, is filed with the department.

156 (f) The dealer or lender shall maintain adequate books,
157 records, or other documentation supporting the deduction taken
158 for the bad debts found to be worthless for which a credit was
159 taken or a refund was claimed under this subsection. If a dealer
160 remits sales tax or use tax to this state and one or more other
161 states, the dealer or its lender claiming any credits or refunds
162 under this subsection may use an apportionment method to
163 substantiate the amount of tax imposed under this chapter
164 included in the bad debts to which the credit or refund applies.
165 The apportionment method must use the dealer's Florida and non-
166 Florida sales, the dealer's taxable and nontaxable sales, and the
167 amount of tax the dealer remitted to this state. Alternatively,
168 the dealer or lender may treat a specified percentage of the
169 private-label credit card accounts as giving rise to a credit or
170 refund under this subsection, which percentage is derived from a
171 sampling of the dealer's or lender's records in accordance with a
172 methodology agreed upon by the department and the dealer or
173 lender.

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174 (g) A lender may have its credit for bad debts claimed on a
175 consolidated sales and use tax return.

176 (h) The department may adopt rules pursuant to ss.
177 120.536(1) and 120.54 to administer this subsection.

178 (i) This subsection does not apply to any credit or refund
179 claim presented under subsection (2) or subsection (3), any
180 assessment or refund denial pertaining to a credit or refund
181 claim made under subsection (2) or subsection (3), or any audit
182 or administrative or judicial proceeding relating to such credit
183 or refund claims pending as of July 1, 2008.

184 Section 2. This act shall take effect July 1, 2008.