

By Senator Lee

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1 A bill to be entitled
2 An act relating to tax credits or refunds; reordering
3 and amending s. 212.17, F.S.; providing procedures,
4 requirements, and calculation methodologies that allow
5 dealers or lenders to obtain tax credits or refunds
6 for taxes paid on worthless or uncollectable private-
7 label credit card or dealer credit card program
8 accounts or receivables; providing definitions;
9 providing an effective date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. Section 212.17, Florida Statutes, is reordered
14 and amended to read:

15 212.17 Tax credits or refunds ~~for returned goods, rentals,~~
16 ~~or admissions; goods acquired for dealer's own use and~~
17 ~~subsequently resold; additional powers of department.-~~

18 (1) (a) If ~~In the event~~ purchases are returned to a dealer
19 by the purchaser or consumer after the tax imposed by this
20 chapter has been collected from or charged to the account of the
21 consumer or user, the dealer is ~~shall be~~ entitled to
22 reimbursement of the amount of tax collected or charged by the
23 dealer, in the manner prescribed by the department.

24 (b) A registered dealer that purchases property for the
25 dealer's own use, pays tax on acquisition, and sells the
26 property subsequent to acquisition without ~~ever~~ having used the
27 property is entitled to reimbursement, in the manner prescribed
28 by the department, of the amount of tax paid on the property's
29 acquisition.

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

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

55 (3) Except as provided under subsection (4), a dealer who
56 has paid the tax imposed by this chapter on tangible personal
57 property or services may take a credit or obtain a refund for
58 any tax paid by the dealer on the unpaid balance due on

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59 worthless accounts within 12 months after ~~following~~ the month in
60 which the bad debt has been charged off for federal income tax
61 purposes. If any accounts so charged off for which a credit or
62 refund has been obtained are subsequently, ~~thereafter~~ in whole
63 or in part, paid to the dealer, the amount so paid shall be
64 included in the first return filed after such collection and the
65 tax paid accordingly.

66 (4) With respect to the payment of taxes on purchases made
67 through a private-label credit card or dealer credit program:

68 (a) If consumer accounts or receivables are found to be
69 worthless or uncollectible, the dealer may claim a credit for,
70 or obtain a refund of, the tax remitted by the dealer on the
71 unpaid balance due if:

72 1. The accounts or receivables have been charged off as bad
73 debt on the lender's books and records on or after January 1,
74 2013;

75 2. A credit was not previously claimed and a refund was not
76 previously allowed on any portion of the accounts or
77 receivables; and

78 3. The credit or refund is claimed within 12 months after
79 the month in which the bad debt is charged off by the lender for
80 federal income tax purposes.

81 (b) If the dealer or the lender subsequently collects, in
82 whole or in part, the accounts or receivables for which a credit
83 or refund has been granted under paragraph (a), the dealer must
84 include the taxable percentage of the amount collected in the
85 first return filed after the collection and pay the tax on the
86 portion of that amount for which a credit or refund was granted.

87 (c) The credit or refund allowed includes all credit sale

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88 transaction amounts that are outstanding in the specific
89 private-label credit card account or receivable at the time the
90 account or receivable is charged off, regardless of the date the
91 credit sale transaction actually occurred.

92 (d) A dealer may use one of the following methods to
93 determine the amount of the credit or refund:

94 1. An apportionment method to substantiate the amount of
95 tax imposed under this chapter which is included in the bad debt
96 to which the credit or refund applies. The method must use the
97 dealer's state and nonstate sales, the dealer's taxable and
98 nontaxable sales, and the amount of tax the dealer remitted to
99 this state; or

100 2. A specified percentage of the accounts or receivables
101 giving rise to the credit or refund, which is derived from a
102 sampling of the dealer's or lender's records in accordance with
103 a methodology agreed upon by the department and the dealer.

104 (e) For purposes of computing the credit or refund,
105 payments on the accounts or receivables shall be allocated based
106 on the terms and conditions of the contract between the dealer
107 or lender and the consumer.

108 (f) A dealer's credit or refund for tax on bad debt may be
109 claimed on any return filed by an entity related by a direct or
110 indirect common ownership of 50 percent or more.

111 (g) For purposes of this subsection, the term:

112 1. "Dealer's affiliates" means an entity affiliated with
113 the dealer under 26 U.S.C. s. 1504, or an entity that would be
114 an affiliate under that section had the entity been a
115 corporation.

116 2. "Dealer credit" means program arrangements where credit

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117 is extended for a specific purchase from a dealer. The term does
118 not include arrangements for purchases of titled property such
119 as motor vehicles, vessels, or motor homes.

120 3. "Lender" means a person who owns or owned a private-
121 label credit card account or a dealer credit account, or an
122 interest in a private-label credit card receivable or dealer
123 credit receivable that:

124 a. The person purchased directly from a dealer or its
125 affiliates who remitted the tax imposed under this chapter or
126 transferred from a third party;

127 b. The person originated pursuant to that person's contract
128 with the dealer or its affiliates who remitted the tax imposed
129 under this chapter; or

130 c. Is affiliated in the manner described under 26 U.S.C. s.
131 1504, regardless of whether the different entities are
132 corporations, to a person described in paragraph (1) (a) or
133 paragraph (1) (b), or an assignee or other transferee of such
134 person.

135 4. "Private-label credit card" means a charge card or
136 credit card that carries, refers to, or is branded with the name
137 or logo of a dealer and can be used for purchases from the
138 dealer whose name or logo appears on the card or for purchases
139 from the dealer's affiliates or franchisees. The term includes
140 dual cards, which are cobranded credit cards that may also be
141 used to make purchases from persons other than the dealer whose
142 name or logo appears on the card or the dealer's affiliates or
143 franchisees. The sales receipts of the dealer and the dealer's
144 affiliates or franchisees must be identifiable apart from any
145 receipts reflecting sales by unrelated persons. This subsection

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146 does not authorize any credits or refunds with respect to sales
147 by such unrelated persons.

148 (6)-(4) (a) The department shall design, prepare, print and
149 furnish to all dealers, except dealers filing through electronic
150 data interchange, or make available or prescribe to the dealers,
151 all necessary forms for filing returns and instructions to
152 ensure a full collection from dealers and an accounting for the
153 taxes due. The, ~~but~~ failure of a any dealer to secure such forms
154 does not relieve the dealer from the payment of the tax at the
155 time and in the manner provided.

156 (b) The department shall prescribe the format and
157 instructions necessary for filing returns in a manner that is
158 initiated through an electronic data interchange to ensure a
159 full collection from dealers and an accounting for the taxes
160 due. The failure of a any dealer to use such format does not
161 relieve the dealer from the payment of the tax at the time and
162 in the manner provided.

163 (7)-(5) The department and its assistants are ~~hereby~~
164 authorized and empowered to administer the oath for the purpose
165 of enforcing and administering ~~the provisions of~~ this chapter.

166 (8)-(6) The department may ~~has authority to~~ adopt rules
167 ~~pursuant to ss. 120.536(1) and 120.54~~ to administer and enforce
168 ~~the provisions of this section~~ chapter.

169 (5)-(7) The department, where admissions, license fees, or
170 rental payments or payments for services are made and ~~thereafter~~
171 returned to the payors after the taxes ~~thereon~~ have been paid,
172 shall return or credit the taxpayer for taxes ~~so~~ paid on the
173 moneys returned in the same manner as ~~is~~ provided for returns or
174 credits of taxes where purchases or tangible personal property

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175 are returnable to a dealer.

176 Section 2. This act shall take effect July 1, 2013.