

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 825 Tax Credits or Refunds
SPONSOR(S): Raulerson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1006

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee		Flieger	Langston
2) Insurance & Banking Subcommittee			
3) Appropriations Committee			

SUMMARY ANALYSIS

Current law s. 212.17(3), F.S., allows sales tax dealers to take a credit or seek a refund for any sales tax collected by that dealer on the unpaid balance of a sale made on credit that is written off as uncollectable. The credit or refund must be claimed within 12 months following the month in which the bad debt has been charged off for federal income tax purposes by the dealer.

Dealers who choose to contract with third party lenders to offer private label credit cards as a financing option to their customers are unable to receive a refund or credit if those debts are written off as uncollectable.

The bill creates a new subsection of s. 212.17, F.S. allowing refunds or credits to be granted for taxes paid on purchases made through a private label credit card that are written off as bad debts. The bill provides definitions and procedures for the Department of Revenue, dealers, and lenders to follow in administering those credits or refunds.

On March 16, 2013, the Revenue Estimating Conference adopted an estimate that this bill would have an impact of -\$11.2 million to General Revenue in FY 2013-14 (-\$8.9 million recurring) and an impact of -\$2.5 million to local governments in FY 2013-14 (-\$2.0 million recurring).

The bill has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Law

Section 212.17(3), F.S., allows sales tax dealers to take a credit or seek a refund for any sales tax collected by that dealer on the unpaid balance of a sale made on credit that is written off as uncollectable. The credit or refund must be claimed within 12 months following the month in which the dealer has charged off the bad debt for federal income tax purposes by the dealer.

Private Label Credit Cards

Section 212.17, F.S., was last amended in 1998.¹ Some retailers no longer offer credit to customers themselves, instead preferring to contract with outside lenders to offer financing for purchases on credit. This can be accomplished through so called “private label credit cards,” credit cards associated with and branded for a specific retailer. While a third-party lender issues the cards and collects the payments from cardholders, the card itself may only be used to make purchases at that dealer’s retail establishments. The private label credit card market is a significant portion of the consumer credit market. In May of 2012 Standard and Poor’s rating service tracked approximately \$52.8 billion in private label credit card receivables, compared to \$265.7 billion in traditional bank issued credit cards. Approximately 6.1% of that private label debt had been written off as uncollectable and worthless bad debt, compared to a 4.1% charge-off percentage for traditional bank issued credit cards.²

Retailers who choose to utilize private label credit cards to finance their customer’s purchases as a business arrangement currently forfeit any ability to claim a credit or refund for the sales tax collected on bad debts. The 1st District Court of Appeal has ruled that, “[a]t common law, there was no right to a refund of taxes from the sovereign. Thus, statutes authorizing tax refunds or exemptions are in derogation of common law; statutes in derogation of the common law must be strictly construed.”³ Therefore, in a situation where a bad debt is written off as worthless by a private label credit card lender, neither the dealer (who did not charge off the bad debt) nor the lender (who was not the dealer who paid the tax) may claim a refund of the sales tax collected on that purchase.

Proposed Changes

Substantively, the bill creates a new subsection (4) of s. 212.17, F.S. allowing refunds or credits to be granted for taxes paid on purchases made via a private label credit card or a dealer credit program that are written off as bad debts.

“Private-label credit card” is defined by the bill as a charge card or credit card that is branded with the name or logo of a dealer that may be used to make purchases from the dealer. The term also includes “dual cards”, which are cards branded with more than one name or logo and may be used to make purchases from persons other than the dealer. However, no credit or refund is authorized for the tax collected on sales made via such card by persons who are not the dealer or an affiliate of the dealer.

“Dealer credit program” is defined as credit extended by a dealer to a customer, but does not include purchases of titled property such as motor vehicles or vessels.

The bill also provides a definition of “lender” that limits the term to such persons that own a private label credit card or dealer credit program receivable account who either purchased that receivable account directly from a dealer, have a contract with a dealer under which the receivable accounts are originated, or are part of the same affiliated group of corporations as a dealer or the assignee of that

¹ Section 14, ch. 98-342, L.O.F.

² <http://www.standardandpoors.com/ratings/articles/en/us/?articleType=HTML&assetID=1245336769124> (last visited 4/8/13)

³ *Dep’t of Revenue v. Bank of Am., N.A.*, 752 So. 2d 637, 641 (Fla. 1st DCA 2000).

dealer who would be eligible to receive refunds under paragraphs (1)(a) or (1)(b) of current law s. 212.17, F.S.⁴

Further, a dealer or lender is not eligible to receive a credit or take a refund for a written off private-label credit card account unless:

- The accounts or receivables have been charged off as bad debt on the lender's books on or after January 1, 2013;
- No credits or refunds for those accounts or receivables had been previously allowed under current law s. 212.17, F.S.;
- The credit or refund is claimed within 12 months after the month in which the bad debt is charged off by the lender for federal income tax purposes.

If a dealer or lender receives a credit or refund but subsequently collects a portion of the accounts or receivables for which the credit or refund was granted, the dealer must pay the applicable tax on the taxable percentage of the amount collected.

The bill provides two methods for a dealer to determine the amount of credit or refund. They may use either:

- An apportionment method based on the dealer's Florida and non-Florida sales and the amount of tax remitted, or
- A specified percentage method derived from a sampling of their books and records using a methodology agreed upon in advance by DOR

The credit or refund may be claimed by any entity that shares common ownership of 50 percent or more with an entity that has a right to such a credit or refund.

The bill also amends the entirety of s. 212.17, F.S., to bring it in accord with currently preferred word usage standards. Existing law subsections of s. 212.17, F.S., are also renumbered.

B. SECTION DIRECTORY:

Section 1. Amends s. 212.17, F.S., providing that lenders and dealers may receive a credit or refund for sales tax collected on certain purchases.

Section 2. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

On March 16, 2013, the Revenue Estimating Conference adopted an estimate that this bill would have an impact of -\$11.2 million to General Revenue in FY 2013-14 (-\$8.9 million recurring).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

⁴ Using "affiliated group" as defined in 26 U.S.C. s. 1504

On March 16, 2013, the Revenue Estimating Conference adopted an estimate that this bill would have an impact of -\$2.5 million to local governments in FY 2013-14 (-\$2.0 million recurring).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Retailers who currently contract with outside lenders to provide private label credit cards to their customers and lenders who provide those cards will be able to receive refunds of sales tax collected on purchases made via those cards that are written off as bad debts.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because the bill is expected to result in a reduction in local option sales taxes. However, an exemption may apply because negative impact to local government taxing authority may be below the threshold for the insignificant fiscal impact on local government exemption.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES