

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: SB 504

INTRODUCER: Senator Lee

SUBJECT: Tax Credits or Refunds

DATE: March 7, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka	CM	<b>Pre-meeting</b>
2.			AFT	
3.			AP	

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**I. Summary:**

Florida currently allows sales tax dealers to obtain a credit or refund of sales tax remitted on dealer-financed sales when the dealer has to “write-off” the debt as uncollectible. SB 504 allows the dealer to take a credit or obtain a refund of the sales tax remitted when a purchaser uses a private-label credit card or other credit program to make the purchase.

The Revenue Estimating Conference (REC) estimates that this bill will reduce general revenue receipts by \$4.4 million in Fiscal Year 2014-15, with a recurring negative impact of \$10.3 million.

**II. Present Situation:**

Chapter 212, F.S., contains the state’s statutory provisions authorizing the levying and collection of Florida’s sales and use tax, as well as the requirements on dealers to collect and remit sales tax. Florida imposes a 6 percent tax on tangible personal property sold, used, consumed, distributed, stored for use or consumption, rented, or leased in Florida.<sup>1</sup> The full amount of sales tax is due at the time the transaction occurs, even if the transaction is a credit sale, installment sale, or a sale made on any kind of deferred payment plan.

Generally, every dealer making retail sales in Florida must register with the Florida Department of Revenue (DOR) to collect sales tax on behalf of the state and remit such sales tax to the department.<sup>2</sup> Chapter 212, F.S., provides for a dealer to take a credit or obtain a refund of taxes remitted under certain circumstances, like on returned retail purchases. A dealer who has remitted sales tax on tangible personal property or services may take a credit or obtain a refund for any tax paid by the dealer on the unpaid balance due on worthless accounts. The dealer must

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<sup>1</sup> See ss. 212.05 and 212.06, F.S.

<sup>2</sup> Sections 212.18 and 212.06(2), F.S.

take the credit or obtain a refund within 12 months following the month in which the bad debt has been charged off by the dealer for federal income tax purposes.<sup>3</sup> If any amount of such worthless account is subsequently paid, the dealer is required to remit the appropriate tax to the DOR. “The dealer that paid the tax and charged off the account is the only person allowed to take the credit or claim the refund. In the case of private-label credit cards, the lender that issued the credit card may not take the credit or claim the refund for any amounts subsequently charged off by the lender.”<sup>4</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 212.17, F.S., to create another method for a dealer to take a credit or obtain a refund for taxes remitted for a charged-off debt related to a consumer account with a private-label credit card or dealer credit program.<sup>5</sup>

The dealer may take a credit or obtain a refund on taxes remitted on the unpaid balance of a worthless or uncollectible account, including all transaction amounts that are outstanding at the time of charge-off, no matter when the original transaction occurred. The dealer cannot have previously taken a credit or obtained a refund for any portion of the account.

The worthless account must have been charged-off as bad debt on the lender’s books and records on or after January 1, 2014, and the dealer must take the credit or obtain the refund within 12 months following the month in which the bad debt has been charged off by the lender for federal income tax purposes. The “lender” is defined as the owner of a private-label credit card account or dealer credit account through purchasing the account from the dealer, an affiliate of the dealer, or a third party; through originating the account; or through affiliation with the purchaser or originator or an assignee of such person.

A dealer may estimate the basis of the credit or refund by using one of the following methods:

- Applying an apportionment method using the dealer’s Florida and non-Florida sales, the dealer’s taxable and nontaxable sales, and the amount of tax the dealer remitted to the DOR; or
- Applying a specified percentage of the accounts giving rise to the credit or refund. This percentage is derived from a sampling of the dealer’s or lender’s records in accordance with a methodology agreed upon by the DOR and the dealer.

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<sup>3</sup> Section 212.17(3), F.S. Generally, a charge-off is a declaration by a creditor that the debt is unlikely to be collected. “A debt becomes worthless when the surrounding facts and circumstances indicate there is no reasonable expectation of payment.” See Internal Revenue Service, Topic 453 – Bad Debt Deduction, available at <http://www.irs.gov/taxtopics/tc453.html> (last visited 2/24/2014).

<sup>4</sup> DOR Bill Analysis, SB 504, January 3, 2014.

<sup>5</sup> “Dealer credit” is defined as “program arrangements where credit is extended for a specific purchase from a dealer” and does not include titled property (for example, a car). “Private-label credit card” is defined as a dealer charge or credit card that is branded with the name or logo of the dealer and can be used for purchases from the dealer or its affiliates or franchises.

When calculating the credit or refund, payments on the worthless account are allocated based on the terms and conditions of the contract between the dealer or lender and the consumer. However, the amount of credit or refund is limited to the following percentages of the taxes remitted to the DOR attributable to the worthless account:

- 25 percent, for amounts charged-off during the 2014 calendar year;
- 50 percent, for amounts charged-off during the 2015 calendar year;
- 75 percent, for amounts charged-off during the 2016 calendar year; and
- 100 percent, for amount charged-off on or after January 1, 2017.

A dealer's credit or refund of taxes remitted on a charged-off debt may be claimed on any return filed by an entity that is related by direct or indirect common ownership of 50 percent or more. The lender is not authorized to take a credit or obtain a refund, unless it is related to the dealer by direct or indirect common ownership of 50 percent or more.

If any amount of such worthless account is subsequently paid to the dealer or lender, the dealer is required to remit to the DOR tax on the portion of "the taxable percentage on the amount collected" for which a credit or refund was granted.<sup>6</sup>

**Section 2** provides an effective date of July 1, 2014.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Article VII, s. 18 of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or take an action unless certain conditions are met.

Subsection (b) of the provision prohibits the Legislature from "enacting, amending, or repealing any general law if the anticipated effect" is to reduce county or municipal aggregate revenue generating authority as it existed on February 1, 1989. The exception to this prohibition is if the Legislature passes such a law by two-thirds of the membership of each chamber.

Subsection (c) of the provision prohibits the Legislature from "enacting, amending, or repealing any general law if the anticipated effect" is to reduce the percentage of a state tax shared with counties and municipalities. The exception to this prohibition is if the Legislature passes such a law by two-thirds of the membership of each chamber.

Subsection (d) provides an exemption from the prohibitions. Laws determined to have an "insignificant fiscal impact," which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 are exempt (April 1, 2013, statewide population estimate was about 19.3 million).<sup>7</sup> The REC estimated that the

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<sup>6</sup> The application of the term "taxable percentage" is unclear.

<sup>7</sup> Office of Economic and Demographic Research, Florida Population Estimates for Counties and Municipalities, April 1, 2013, available at [http://edr.state.fl.us/Content/population-demographics/data/2013\\_Pop\\_Estimates.pdf](http://edr.state.fl.us/Content/population-demographics/data/2013_Pop_Estimates.pdf) (last visited 2/26/2014).

provisions of this bill will have a fiscal impact of \$2.3 million at the local level in Fiscal Year 2014-15.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

The REC estimates that this bill will reduce general revenue receipts by \$4.4 million in Fiscal Year 2014-15, and adopted the following estimate of the recurring impacts of this bill:

	<b>FY 2014-15</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>	<b>FY 2018-19</b>
<b>General Revenue</b>	(10.3)	(11.3)	(11.8)	(12.3)	(12.9)
<b>State Trust</b>	(Insignificant)	(Insignificant)	(Insignificant)	(Insignificant)	(Insignificant)
<b>Revenue Sharing</b>	(0.3)	(0.4)	(0.4)	(0.4)	(0.4)
<b>Local Gov't Half Cent</b>	(1.0)	(1.1)	(1.1)	(1.2)	(1.2)
<b>Local Option</b>	(1.0)	(1.1)	(1.1)	(1.2)	(1.3)
<b>Total Local Impact</b>	(2.3)	(2.6)	(2.6)	(2.8)	(2.9)
<b>Total Impact</b>	(12.6)	(13.9)	(14.4)	(15.1)	(15.8)

**B. Private Sector Impact:**

Dealers and their affiliates may be able to take a credit or obtain a refund for more bad debts related to private-label credit cards or dealer credit programs than under current law.

**C. Government Sector Impact:**

The DOR stated that the bill would have an insignificant impact on operations.<sup>8</sup>

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<sup>8</sup> DOR, 2014 Bill Analysis, SB 504 (January 3, 2013).

**VI. Technical Deficiencies:**

The DOR raised several issues in its analysis of the bill that present difficulty in implementation, administration, or enforcement of the bill.<sup>9</sup> These include:

- As the term “dealer credit” is defined, the DOR stated that assuming that the term relates to credit extended by a dealer, as opposed to a lender, current law already provides for the taking of a credit or obtaining a refund for such worthless accounts. DOR recommends removing references to “dealer credit” from the bill.
- It is unclear if an “uncollectible” account has a different meaning from “worthless,” and thus creates a distinct standard.
- The ability for an entity related by direct or indirect common ownership of at least 50 percent to take a credit or obtain a refund may be burdensome on such entities and the DOR because the DOR would be required to trace all transfers of debt, determine ownership interests, and verify the claim. This would likely require an audit of the parties involved.
- The definition of “lender” is unclear in two ways:
  - The term “lender” includes accounts transferred from a third party, and the tracing of such relationships may be burdensome on such entities and the DOR because the DOR would be required to trace all transfer of the debt, determine the ownership interest, and verify the claim. This would likely require an audit of the parties involved.
  - The term “lender” includes persons who own an interest in a worthless account, and the tracing of such relationships may be burdensome on such entities and the DOR because the DOR would be required to trace all transfer of the debt, determine the ownership interest, and verify the claim. This would likely require an audit of the parties involved. Additionally it is unclear to the DOR how to apportion the proper credit or refund if not all of the lenders with interest charge off the account.
- The bill on lines 146 and 147 refer to paragraph (1)(a) and (1)(b), respectively. It is likely that the correct references should be to sub-subparagraphs (4)(h)3.a. and 3.b.
- If a cardholder is able to use the private-label credit card to make purchases from persons other than the dealer, the bill is unclear about the rights of the other dealers in taking a credit or obtaining a refund of the taxes paid on the charged-off debt.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 212.17 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

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<sup>9</sup> DOR, 2014 Bill Analysis, SB 504 (January 3, 2013).

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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