

By the Committee on Commerce and Tourism; and Senator Lee

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1 A bill to be entitled
2 An act relating to tax credits or refunds; amending s.
3 212.17, F.S.; providing procedures, requirements, and
4 calculation methodologies that allow dealers to obtain
5 tax credits or refunds for taxes paid on worthless or
6 uncollectible private-label credit card accounts or
7 receivables; providing limitations on the amount that
8 may be recovered; providing definitions; providing an
9 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~~ 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 in
47 which ~~wherein~~ the dealer retains a security interest in the
48 property pursuant to chapter 679, may take credit or obtain a
49 refund for the tax paid by the dealer on the unpaid balance due
50 him or her when he or she repossesses the property, ~~(with or~~
51 ~~without judicial process,)~~ ~~the property~~ within 12 months after
52 ~~following~~ the month in which the property was repossessed. If
53 ~~When~~ such repossessed property is resold, the sale is subject in
54 all 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 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 2014;

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 on
91 which the 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 Florida and non-Florida 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) The credit or refund for tax on bad debt may be claimed
109 on any return filed by an entity related by a direct or indirect
110 common ownership of 50 percent or more.

111 (g) The amount of the credit or refund a dealer is eligible
112 to recover under this subsection is limited to the following:

113 1. For amounts charged off during the calendar year ending
114 December 31, 2014, 25 percent of the tax paid to the department
115 which is attributable to bad debt.

116 2. For amounts charged off during the calendar year ending

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117 December 31, 2015, 50 percent of the tax paid to the department
118 which is attributable to bad debt.

119 3. For amounts charged off during the calendar year ending
120 December 31, 2016, 75 percent of the tax paid to the department
121 which is attributable to bad debt.

122 4. For amounts charged off on or after January 1, 2017, the
123 full amount paid to the department which is attributable to bad
124 debt.

125 (h) As used in this subsection, the term:

126 1. "Dealer's affiliates" means an entity affiliated with
127 the dealer under 26 U.S.C. s. 1504 or an entity that would be an
128 affiliate under that section if the entity were a corporation.

129 2. "Lender" means a person who owns or has owned a private-
130 label credit card account or an interest in a private-label
131 credit card receivable that:

132 a. The person purchased directly from a dealer who remitted
133 the tax imposed under this chapter or from the dealer's
134 affiliates, or that was transferred from a third party;

135 b. The person originated pursuant to that person's contract
136 with a dealer who remitted the tax imposed under this chapter or
137 with the dealer's affiliates; or

138 c. Is affiliated in the manner described under 26 U.S.C. s.
139 1504, regardless of whether the different entities are
140 corporations, to a person described in sub-subparagraph a. or
141 sub-subparagraph b. or to an assignee or other transferee of
142 such person.

143 3. "Private-label credit card" means a charge card or
144 credit card that carries, refers to, or is branded with the name
145 or logo of a dealer and can be used for purchases from the

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146 dealer whose name or logo appears on the card or for purchases
147 from the dealer's affiliates or franchisees.

148 (6)~~(4)~~~~(a)~~ The department shall:

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

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

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

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

170 (5)~~(7)~~ If ~~The department,~~ where admissions, license fees,
171 ~~or~~ rental payments, or payments for services are made and
172 ~~thereafter~~ returned to ~~the~~ payors after the taxes ~~thereon~~ have
173 been paid, the department shall return or credit the taxpayer
174 for taxes ~~so~~ paid on the moneys returned in the same manner as

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175 ~~is~~ provided for returns or credits of taxes if ~~where~~ purchases
176 or tangible personal property are returnable to a dealer.

177 Section 2. This act shall take effect July 1, 2014.