

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.)

Prepared By: The Professional Staff of the Committee on Finance and Tax

BILL: SPB 7060

INTRODUCER: Finance and Tax Committee

SUBJECT: Taxes on Purchases Made Through Private-label Credit Card Programs

DATE: April 18, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Gross	Babin		FT Submitted as Comm. Bill/Fav

I. Summary:

SPB 7060 repeals the provision that grants dealers a credit or refund for sales tax remitted on the unpaid balance of an account when the purchase was made through the retailer's private-label credit card. The current amount of credit or refund available is limited to 64.4 percent of the amount of tax remitted on the unpaid balance if the dealer shows that the bad debt has been written off on the lender's books.

The Revenue Estimating Conference has not analyzed the bill. See Section V. Fiscal Impact Statement for more information.

The bill takes effect July 1, 2023.

II. Present Situation:

Florida Sales Use Tax

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property,¹ admissions,² transient rentals,³ and a limited number of services, and a 5.5 percent sales and use tax on the rental of commercial real estate.⁴ Chapter 212, F.S., contains provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. Sales tax is added to the price of the taxable good or service, collected from the purchaser at the time of sale, and remitted to the state by the dealer.⁵ The full amount of sales tax is due at the time the sale occurs, including sales on credit, installment, or deferred payment plans.

¹ Section 212.05(1)(a)1.a., F.S.

² Section 212.04(1)(b), F.S.

³ Section 212.03(1)(a), F.S.

⁴ Section 212.031, F.S.

⁵ Section 212.07(2), F.S.

Counties are authorized to impose local discretionary sales surtaxes in addition to the state sales tax.⁶ A surtax applies to “all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202.”⁷ The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold or delivered. Discretionary sales surtax rates currently levied vary by county in a range of 0.0 to 1.5 percent.⁸

Private-Label Credit Cards

Private-label credit cards (PLCCs) provide consumers the opportunity to make purchases on credit at specific retailers or retailer affiliates by way of a retailer-branded credit card. The accounts are managed by a third-party financial institution, such as a bank.⁹ In contrast to co-branded cards, discussed below, these cards do not have a credit card network logo such as Visa or Mastercard, nor are they accepted by other merchants.¹⁰ Structuring a credit program in this manner shifts to the financial institution responsibilities agreed to between the retailer and financial institution that typically include card issuance, credit funding and underwriting, and payment collection.¹¹

Co-branded cards, retail-branded cards that are also branded with a credit card network logo, “blur” the lines between PLCCs and general use credit cards and may provide consumers with store-specific benefits and use of the card elsewhere for everyday purchases. Macy’s American Express Card is an example of a co-branded card.¹²

In July of 2022, the credit agency, Experian, presented data showing that total consumer retail credit card debt in 2021 totaled \$111.62 billion.¹³ For comparison, total debt held on credit cards issued by banks amounted to \$784.5 billion that same year. Experian describes retail credit cards as private-label credit cards or store credit cards and they differ from more general use cards issued by banks and financial institutions.¹⁴

Credit or Refund for Bad Debt

In 1967, the Legislature authorized dealers to take a credit on the portion of sales tax paid on tangible personal property that was written off as bad debt for federal income tax purposes.¹⁵ Today, state law continues to allow dealers to take a credit or obtain a refund on the unpaid

⁶ Section 212.055, F.S.

⁷ Section 212.054(2)(a), F.S.

⁸ FLA. DEP’T OF REVENUE, *Discretionary Sales Surtax Information for Calendar Year 2023*, available at: https://floridarevenue.com/Forms_library/current/dr15dss.pdf (last visited April 3, 2023).

⁹ Julia Kagan, *Private Label Credit Cards: Overview, Benefits and Examples*, Investopedia.com, available at: <https://www.investopedia.com/terms/p/private-label-credit.asp> (last visited April 3, 2023).

¹⁰ *Id.*

¹¹ *Id.*

¹² Chris Horymski, *Retail Credit Card Balances Continued to Decline in 2021*, Experian.com, available at: <https://www.experian.com/blogs/ask-experian/research/retail-credit-card-study/> (last visited April 3, 2023).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Chapter 67-518, L.O.F.

balance of a worthless account if a claim is made within 12 months after the bad debt has been written off for federal income tax purposes. If any amount of the worthless account is subsequently paid, the dealer is required to remit the appropriate tax to the Department of Revenue.¹⁶

In 2014, the Legislature authorized dealers to receive, when payment was made through a private-label credit card, a credit or refund equal to 64.4 percent of the sales tax remitted on the unpaid balance of a consumer's account found to be worthless.¹⁷ Florida law defines "private-label credit cards" as a charge card or credit card that carries, refers to, or is branded with the name or logo of a dealer and can be used for purchases from the dealer whose name or logo appears on the card or for purchases from the dealer's affiliates or franchises.¹⁸ A reimbursement under this provision is allowed for retailer-specific credit cards that may only be used at the retailer or its affiliates.¹⁹

Dealers must show that the account has been charged off as bad debt on the lender's books and that no prior credit or refund was claimed. The credit or refund must be claimed within 12 months after the bad debt was charged off by the lender for federal income taxes. In addition, if any amount of the worthless account is subsequently collected by the dealer or the lender, the dealer is required to remit the appropriate tax in the first return after collection.

There are two methods to determine the amount of a credit or refund. One requires a dealer to establish apportionment splits between Florida and non-Florida sales, taxable and nontaxable sales, and the amount of tax remitted to the state in an effort to substantiate the amount of tax included in the bad debt. The second method requires use of specified percentages of the accounts that give rise to a credit or refund. This requires a sampling of the dealer's or lender's records and the method must be agreed to by the DOR.

III. Effect of Proposed Changes:

The bill repeals the credit or refund granted to dealers for the sales tax remitted on the unpaid balance of a consumer's account found to be worthless when payment was made through a private-label credit card.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

¹⁶ Section 212.17(3), F.S.

¹⁷ Chapter 2014-38, L.O.F.

¹⁸ Section 212.17(4), F.S.

¹⁹ FLA. DEP'T OF REVENUE, *Refund Process, Bad Debt, Refund Procedures*, (rev. April 2020) (on file with the Committee on Finance and Tax).

The bill does not create a mandate subject to Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, s. 19 of the Florida Constitution requires a bill that creates a new state tax or fee, raises a state tax or fee, or removes an exemption or credit to pass the Legislature by a two-thirds vote. Additionally, the change must be contained in a separate bill with no other subject. Repealing the credit for tax remitted by a dealer when the bad debt has been written off a lender's books may subject the bill to these requirements.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference (REC) has not analyzed this bill. However, staff estimates an increase in revenue approximately equal to \$7.8 million for FY 2023-2024.²⁰

B. Private Sector Impact:

Dealers will no longer be able to receive a credit or refund of sales tax paid when tangible personal property is purchased through a private-label credit card, which may decrease the amount of money a dealer would have otherwise been able to collect on accounts with unpaid balances.

C. Government Sector Impact:

Reduced applications for and processing of refunds and credits may decrease costs incurred by the Department of Revenue.

²⁰ The estimate presented here is based on data compiled for a REC impact analysis for HB 791, which would increase the credit amount from 64.4 percent to 100 percent. See OFF. OF ECON. AND DEMOGRAPHIC RS.CH., *Revenue Estimating Conference, Private Label Credit Cards Bad Debt Sales Tax Credit*, (Feb. 24, 2023), available at: <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2023/pdf/page143-145.pdf> (last visited April 3, 2023).

VI. Technical Deficiencies:

None.

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.

B. Amendments:

None.