

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 791 Taxes on Purchases Made Through Private-label Credit Card Programs

**SPONSOR(S):** Brackett

**TIED BILLS:**           **IDEN./SIM. BILLS:**

<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR or BUDGET/POLICY CHIEF</b>
1) Ways & Means Committee	19 Y, 2 N	LaTorre	Aldridge
2) Insurance & Banking Subcommittee	14 Y, 0 N	Lloyd	Lloyd
3) Commerce Committee			

**SUMMARY ANALYSIS**

Under Chapter 212, F.S., the state levies a six percent sales and use tax on the retail sale of most tangible personal property, admissions, transient lodgings, and commercial real estate leases. The full amount of sales tax is due at the time a transaction occurs, even if the transaction is a credit sale, installment sale, or a sale made on any kind of deferred payment plan.

Currently, a dealer can take a credit or obtain a refund of up to 64.4 percent for the taxes remitted on the unpaid balance of a worthless or uncollectible private-label credit card account.<sup>1</sup> “Private-label credit cards” are defined 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.<sup>2</sup>

The bill removes the 64.4 percent limit on the maximum amount of tax that can be recovered on the unpaid balance of a worthless or uncollectible private label credit card account.

The Revenue Estimating Conference estimated that in FY 2023-24, the bill would have -\$3.6 million cash and a -\$3.8 million recurring impact on General Revenue, an insignificant negative impact on state trust funds, and a -\$0.9 million cash and -\$1 million recurring impact on local government revenues.

The effective date of this bill is July 1, 2023.

<sup>1</sup> Section 212.17(4), F.S.

<sup>2</sup> *Id.*

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### **Sales Tax**

Chapter 212, F.S., contains the state's statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the requirements for 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. The full amount of sales tax is due at the time a transaction occurs, even if the transaction is a credit sale, installment sale, or a sale made on any kind of deferred payment plan.<sup>3</sup>

##### **Credit or Refund for Bad Debt**

A dealer who has remitted sales tax may take a credit or obtain a refund for any tax paid on the unpaid balance due on worthless accounts.<sup>4</sup> The dealer must 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>5</sup> If any amount of the worthless account is subsequently paid, the dealer is required to remit the appropriate tax to the Department of Revenue.<sup>6</sup> The dealer that paid the tax and charged off the account is the only person allowed to take the credit or claim the refund.

##### **Private Label Credit Cards**

In 2014, the legislature amended s. 212.17, F.S., allowing a dealer to take a partial credit or obtain a partial refund of taxes remitted on the unpaid balance of a worthless or uncollectible private-label credit card account.<sup>7</sup> "Private-label credit cards" are defined 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.<sup>8</sup>

Section 212.17(4), F.S., sets forth the criteria for calculating the amount of the credit or refund that a dealer is eligible to recover. The criteria are similar to the provisions for refunds of bad debt under s. 212.17(3), F.S., but specify that the dealer must take the credit or obtain a refund within 12 months following the month in which the bad debt has been charged off by the lender for federal income tax purposes.<sup>9</sup> If any amount of the worthless account is subsequently paid to the dealer or the lender, the dealer is required to remit the appropriate tax to the Department of Revenue.<sup>10</sup> The dealer that paid the tax, or an entity related by a direct or indirect common ownership of 50 percent or more, is the only person allowed to take the credit or claim the refund.<sup>11</sup> The lender is not eligible to apply for a credit or refund. In addition, the statute specifies that the dealer must use either an apportionment method or a sampling method to determine the amount of the credit or refund.<sup>12</sup> The total amount of the credit or refund is limited to 64.4 percent of the amount of taxes paid on a worthless account.<sup>13</sup>

#### Effect of Proposed Changes

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<sup>3</sup> Section 212.06(1)(a), F.S.

<sup>4</sup> Section 212.17(3), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Section 212.17(4)(a), F.S.

<sup>8</sup> Section 212.17(4)(h)3., F.S.

<sup>9</sup> Section 212.17(4)(a)(3), F.S.

<sup>10</sup> Section 212.17(4)(b), F.S.

<sup>11</sup> Section 212.17(4)(f), F.S.

<sup>12</sup> Section 212.17(4)(d), F.S.

<sup>13</sup> Section 212.17(4)(g), F.S.

The bill amends s. 212.17(4), F.S., removing the 64.4 percent limit on the maximum amount of tax that can be recovered on the unpaid balance of a worthless or uncollectible private label credit card account. Dealers will instead be eligible for a full refund or credit for tax paid on worthless or uncollectible private label credit card debts, beginning July 1, 2023.

**B. SECTION DIRECTORY:**

Section 1: Amends s. 212.17(4), F.S., removing 64.4 percent limit on the maximum amount of tax that can be recovered by a dealer on the unpaid balance of a worthless or uncollectible private label credit card account.

Section 2: Provides an effective date of July 1, 2023.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The Revenue Estimating Conference estimated that in FY 2023-24, the bill would have -\$3.6 million cash and a -\$3.8 million recurring impact on General Revenue, and an insignificant negative impact on state trust funds.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The Revenue Estimating Conference estimated that in FY 2023-24, the bill would have a -\$0.9 million cash and -\$1 million recurring impact on local government revenues.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Dealers will be eligible to recover the full amount of taxes remitted on the unpaid balance of a worthless or uncollectible private-label credit card account.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**