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 Banking and Insurance

BILL:	SB 1006
INTRODUCER:	Senator Lee
SUBJECT:	Tax Credits or Refunds
DATE:	April 6, 2013
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	**Pre-meeting**
2.			AFT	
3.			AP	
4.				
5.				
6.				

I. Summary:

SB 1006 would expand the availability of the bad debt tax credit or tax refund to "private-label" credit card or dealer credit programs. The bill would allow a dealer to take a tax credit or obtain a tax refund in situations where the dealer reported the tax, but another person, the lender, charges off the account or receivable with respect to a private-label credit card[1] or dealer credit program.

Current law requires dealers to collect and remit sales tax on the full sales price at the time of sale even if the sale is a credit card transaction or made pursuant to a deferred payment plan. Current law allows a dealer to take tax credit or seek a tax refund of any sales tax paid by the dealer on accounts that are determined to be worthless and that are charged off by the dealer as bad debts for federal income tax purposes. 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.

This bill substantially amends the following section of the Florida Statutes: 212.17.

II. Present Situation:

The responsibilities of the Department of Revenue (DOR) include, but are not limited to, tax auditing activities, tax collection and enforcement, taxpayer assistance, and the development,

[1] Private label or store credit cards are cards branded for a specific retailer or independent dealer. If the retailer does not manage the private label card, a third-party issues the cards and collects the payments from cardholders.

maintenance, and management of information systems for tax return processing and taxpayer registration.[2]

The DOR is responsible for administering ch. 212, F.S., relating to the tax on sales, use, and other transactions. Under ch. 212, F.S., dealers are required to collect and remit sales tax on the full sales price at the time of sale, even if the transaction is a credit sale or made pursuant to a deferred payment plan.[3] A dealer who has paid the tax imposed under chapter 212, F.S., 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 within 12 months following the month in which the bad debt has been charged off for federal income tax purposes. [4] 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.

III. Effect of Proposed Changes:

Section 1 amends s. 212.17, F.S., by extending the availability of the bad debt credit or refund to private label credit card or dealer credit programs. With respect to the payment of taxes on purchases made through private-label credit card or dealer credit program, the bill requires that the following conditions be met before a deduction may be claimed or a refund obtained where consumer accounts or receivables are found to be worthless or uncollectable:

- The accounts or receivables have been charged off as bad debt on the lender's books and records on or after January 1, 2013;
- A credit was not previously claimed and a refund was not previously allowed on any portion of the accounts or receivables; and
- 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.

The section provides that only the dealer may claim the credit or obtain the refund. If a dealer or the lender subsequently collects the accounts or receivables for which a credit or refund has been granted, the dealer is required to pay tax on the "taxable percentage" of the amount collected for which a credit or refund was granted.

The section provides that the credit or refund allowed would include all credit-sale transaction amounts that are outstanding in the specific private-label credit card amount or receivable at the time the account or receivable is charged off.

A dealer's credit or refund for tax on bad debts may be claimed on any return filed by an entity that is related by direct or indirect common ownership of 50 percent or more.
A dealer may estimate the basis of the credit or refund by using one or the following methods:

- Applying an apportionment method using the dealer's "state and nonstate sales," the dealers taxable and nontaxable sales, and the amount of tax the dealer remitted to Florida; or

[2] Section 20.21, F.S.
[3] Section 212.06(1), F.S.
[4] Section 212.17(3), F.S.

- Applying a specified percentage of the accounts or receivables 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.

The section creates definitions for various terms, including private-label credit card, and lender.

Section 2 provides that the act will take effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would extend the availability of the bad debt credit or refund to private-label credit card or dealer credit programs.

C. Government Sector Impact:

On March 16, 2013, the Revenue Estimating Conference adopted the following impact that assumed the low charge off rate, the middle recovery rate and updated growth rates from the March 15, 2013, General Revenue Conference. The summary information of the impact is provided below.

Tax: Sales and Use Tax
Issue: Refunds - Private Label Credit
Bill Number(s): HB 825/SB 1006

	General Revenue		Trust		Revenue Sharing		Local Half Cent	
	Cash	Recurring	Cash	Recurring	Cash	Recurring	Cash	Recurring
2013-14	(11.2)	(8.9)	(Insignificant)	(Insignificant)	(0.4)	(0.3)	(1.1)	(0.8)
2014-15	(9.7)	(9.2)	(Insignificant)	(Insignificant)	(0.3)	(0.3)	(0.9)	(0.9)
2015-16	(10.1)	(9.7)	(Insignificant)	(Insignificant)	(0.3)	(0.3)	(1.0)	(0.9)
2016-17	(10.6)	(10.1)	(Insignificant)	(Insignificant)	(0.4)	(0.3)	(1.0)	(1.0)
2017-18	(11.2)	(10.6)	(Insignificant)	(Insignificant)	(0.4)	(0.4)	(1.1)	(1.0)

	Local Option		Total Local		Total	
	Cash	Recurring	Cash	Recurring	Cash	Recurring
2013-14	(1.1)	(0.9)	(2.5)	(2.0)	(13.7)	(10.9)
2014-15	(0.9)	(0.9)	(2.2)	(2.1)	(11.9)	(11.3)
2015-16	(1.0)	(0.9)	(2.3)	(2.2)	(12.4)	(11.9)
2016-17	(1.0)	(1.0)	(2.4)	(2.3)	(13.0)	(12.4)
2017-18	(1.1)	(1.0)	(2.5)	(2.4)	(13.7)	(13.0)

VI. Technical Deficiencies:

The DOR identified the following issues with respect to the bill:

- Page 3, lines 68-69 -- provides that the revised subsection (4) applies "if consumer accounts or receivables are found to be worthless or *uncollectible*…" Existing s. 212.17(3), F.S., currently uses the term, "worthless." It is unclear if the bill language "or uncollectible" is superfluous or whether the bill intends to create a distinct standard under subsection (4).
- Page 4, lines 92-103 -- provides that a dealer may use one or two allowable methods for estimating the credit or refund amount. The first of the two proposed methods requires using, among other things, "the dealer's state and *nonstate* sales." For purposes of clarity, it is recommended that this language be changed to "dealer's Florida and non-Florida sales."
- Page 4, lines 108-110 -- provides that a dealer's deduction or credit may be claimed on any return filed by an entity related by direct or indirect common ownership of at least 50 percent. This provision may prove burdensome on the dealers and lenders involved, as well as the DOR, because the DOR will be required to trace all transfers of the debt, determine ownership interests, etc., when verifying a claim. In order to do so, the DOR will have to audit, and request documentation from all parties involved.
- Pages 4 -5, lines 116-199 -- define the term, "dealer credit," as "program arrangements where credit is extended for a specific purchase from a dealer. The term does not include arrangements for purchases of titled property." Although unclear, it appears the term, "dealer credit," relates to credit extended by a dealer, as opposed to by a lender. Assuming this is the case, any reference to "dealer credit" is unnecessary because s. 212.17(3), F.S., currently addresses bad debts involving credit provided by a dealer.
- Page 5, lines 120 - 134 -- In the definition of "lender," it is unclear what the following language means in proposed section 212.17(4)(g)[3.a.], F.S.: "or transferred from a third

party." (*see* page 5, lines 124 - 126). This analysis assumes the referenced language means that any third party transferee of an account or receivable is included in the definition of "lender." This assumption is consistent with the following language found later in the same definition of "lender": "or an assignee or other transferee of such person." (see page 5, lines 133 - 134). In cases where an account or receivable is transferred a number of times, the cases may prove to be burdensome on the parties to the various transactions, as well as on the DOR, because the DOR will be required to trace all transfers of the debt, determine ownership, etc., when verifying a claim. In order to do so, the DOR will have to audit, and request documentation from, all parties involved in the various transactions.

- Page 5, lines 120 - 134 – The term "lender" is defined to include, among other things, certain persons who own "*an interest* in a private-label credit card receivable or dealer credit receivable." (emphasis added) (see page 5, lines 120 - 123). It is conceivable that there could be multiple "lenders" owning an interest in the same receivable. These cases may prove to be burdensome on the parties to the various transactions, as well as on the DOR, because the DOR will be required to trace all transfers of the debt, determine ownership interests, etc., when verifying a claim. In order to do so, the DOR will have to audit, and request documentation from, all parties involved in the various transactions. Also, it is unclear what the proper credit or refund amount would be in these cases, particularly if only one lender charges off its "interest" in the receivable, given the following language in proposed section 212.17(4)(c), F.S.: "The credit or refund allowed includes *all credit sale transaction amounts* that are outstanding in the specific private-label credit card account or receivable at the time the account or receivable is charged off …." (emphasis added) (see pages 3 - 4, lines 87 - 91).
- Page 5, lines 132 - 133, refers to "a person described in paragraph (1)(a) or paragraph (1)(b) …." It is noted that although existing subsection (1) of section 212.17, F.S., does currently contain both a paragraph (a) and paragraph (b), it does not appear that the bill intended to reference these two paragraphs in existing subsection (1). Instead, the context of the bill suggests that the references in page 5, lines 132 - 133 of the bill, were intended to be to "sub-subparagraph a. or sub-subparagraph b."
- Pages 5 - 6, lines 135 - 147 – The definition of "private-label credit card" includes "dual cards," which are defined, in part, as "cobranded credit cards that may also be used to make purchases from persons other than the dealer whose name or logo appears on the card or the dealer's affiliates or franchisees." The bill provides that, with respect to dual cards, any purchases from persons other than the dealer or the dealer's affiliates or franchisees are not eligible for the bad debt deduction or refund. In other words, written-off dual card accounts or receivables may be comprised of both eligible and ineligible purchases. The bill provides that "the sales receipts of the dealer and the dealer's affiliates or franchisees must be identifiable apart from any receipts reflecting sales by unrelated persons;" however, it is unclear how the DOR could administer deduction or refund claims with respect to dual card accounts, particularly in light of (i) the allowable methods of estimation set forth in proposed section 212.17(4)(d), F.S., which do not appear to contemplate information from the dealer's franchisees or affiliates, or from unrelated persons, and (ii) proposed section 212.17(4)(c), F.S., which provides that "[t]he credit or refund allowed includes *all credit sale transaction amounts that are outstanding* in the specific private-label credit card account or receivable at the time the account or receivable is charged off ….". These cases may also prove to be burdensome on the dealers and lenders involved, because the DOR will be required to trace all transfers of the debt, determine ownership interests, separate eligible and ineligible

purchases, etc., when verifying a claim. In order to do so, the DOR will have to audit, and request documentation from, all parties involved.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.