

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 Commerce and Tourism

BILL: CS/SB 504

INTRODUCER: Commerce and Tourism Committee and Senator Lee

SUBJECT: Tax Credits or Refunds

DATE: March 11, 2014

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|--------|
| 1. | Hrdlicka | Hrdlicka | CM | Fav/CS |
| 2. | | | AFT | |
| 3. | | | AP | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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 to make the purchase. 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.

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.¹ 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.

¹ See ss. 212.05 and 212.06, F.S.

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.² 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 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.³ 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.”⁴

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.⁵

The dealer may take a credit or obtain a refund on taxes remitted on the unpaid balance of a worthless or “uncollectible” private-label credit card account, including all transaction amounts that are outstanding at the time of charge-off. It does not 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 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

² Sections 212.18 and 212.06(2), F.S.

³ 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).

⁴ DOR Bill Analysis, SB 504, January 3, 2014.

⁵ “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. It is not clear whether or not such a card may be used to make purchases from persons other than the dealer.

- 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.

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.⁶

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 raise revenues, or reducing the percentage of a state tax shared with counties and municipalities, unless certain conditions are met. Generally, the exception to the prohibitions is if the Legislature passes such a law by two-thirds of the membership of each chamber.

Additionally, 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. As of April 1, 2013, the statewide population estimate was about 19.3 million.⁷ However, the Revenue Estimating Conference estimated that the provisions of this bill will have a fiscal impact of \$2.3 million at the local level in Fiscal Year 2014-15.

⁶ The application of the term "taxable percentage" is unclear.

⁷ 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 (last visited 2/26/2014).

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:

| | FY 2014-15 | FY 2015-16 | FY 2016-17 | FY 2017-18 | FY 2018-19 |
|------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| General Revenue | (10.3) | (11.3) | (11.8) | (12.3) | (12.9) |
| State Trust | (Insignificant) | (Insignificant) | (Insignificant) | (Insignificant) | (Insignificant) |
| Revenue Sharing | (0.3) | (0.4) | (0.4) | (0.4) | (0.4) |
| Local Gov't Half Cent | (1.0) | (1.1) | (1.1) | (1.2) | (1.2) |
| Local Option | (1.0) | (1.1) | (1.1) | (1.2) | (1.3) |
| Total Local Impact | (2.3) | (2.6) | (2.6) | (2.8) | (2.9) |
| Total Impact | (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 than under current law.

C. Government Sector Impact:

The DOR stated that the bill would have an insignificant fiscal impact on operations.⁸

⁸ 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.⁹ These include:

- 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 three 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.
 - It is unclear to the DOR how to apportion the proper credit or refund if not all of the lenders with an interest in a worthless account charge off the account.
- 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 Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on March 10, 2014:

The CS removes the term “dealer credit” from the new provision for taking a credit or obtaining a refund of sales taxes paid on certain worthless debts. Current law already provides for the taking of a credit or obtaining a refund for worthless accounts.

Additionally, the CS fixes an internal cross-reference.

⁹ DOR, 2014 Bill Analysis, SB 504 (January 3, 2013).

B. Amendments:

None.

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