

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Commerce Committee

BILL: SB 982

INTRODUCER: Senator Haridopolos

SUBJECT: Tax Credits/Worthless Credit Cards

DATE: March 5, 2007 Revised

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	Pre-meeting
2.			FT	
3.			GA	
4.				
5.				
6.				

I. Summary:

SB 982 allows retailers and other dealers as defined in ch. 212, F.S., as well as certain lenders, to obtain a sales tax refund or sales tax credit on the unpaid balance of private-label credit cards that have been written off as bad debts for federal income tax purposes.

“Private label credit cards” are defined in the bill as charge cards or credit cards that carry the name or logo of a dealer and can be used to make purchases from those dealers, their affiliates, or other businesses.

A dealer or lender must meet various record-keeping requirements and file appropriate paperwork with the Florida Department of Revenue (DOR) and meet the following conditions before receiving the sales tax refund or credit:

- No sales tax refund or credit was previously claimed or allowed on any portion of the specified account;
- The account is determined to be worthless and is deductible as a bad debt for federal income tax purposes by either the lender or any entity affiliated with the lender; and
- The account is found to be worthless on or after July 1, 2007, and the credit or refund is claimed no later than 12 months following the filing date of the federal income tax return that includes the account write-off.

DOR also is authorized to adopt rules implementing the new sales tax credit or refund.

This bill amends s. 212.17 of the Florida Statutes.

II. Present Situation:

Section 212.17(3), F.S., authorizes DOR to provide a sales tax credit or sales tax refund to dealers on unpaid accounts that have been charged off as bad debts for federal income tax purposes. The dealer must take the tax credit or refund within 12 months following the month in which the unpaid accounts were charged off.

Financial institutions and other lenders that offer traditional credit or debit cards are not eligible for sales tax credits or refunds for worthless accounts. Neither are retailers and lenders who have partnered to offer “private label credit cards” and “co-branded credit cards” to consumers, and are writing off bad debts for federal tax purposes.

Private label credit cards are generally defined as credit cards that have been branded with a specific retailer’s or company’s name and logo.¹ Even though the name of a retailer or other business is on the front of the card, another company typically manages the issuing and processing of the accounts. Within the last decade, a significant number of retailers who used to have in-house credit cards (such as Sears, Spiegel, BP Oil, and Circuit City) have divested themselves of managing their credit accounts and outsourced them to financial institutions such as Citibank Commerce, GE Consumer Finance Bank, and HSBC.² Private label credit card issuers’ market share of store credit accounts receivable have jumped from 45 percent in 1999, to 85 percent in 2004, and were expected to exceed 92 percent by the end of 2006.³ The private-label credit card industry is valued at \$106 billion.⁴

A subset of private label credit cards is the “co-branded credit card,”⁵ where a retailer’s or business’ name and logo are prominently displayed, but in the bottom corner there is an “American Express,” “Visa,” “MasterCard,” or “Discover” logo. These cards can be used to purchase items or services from a retailer, as well as anyplace else that accepts the third-party issuer. These cards also typically provide rewards for consumers based on their usage. The consumer receives two monthly bills: one that lists the charges made at the retail or business outlet, and one that lists all of the other charges.⁶

In response to the changing credit card market, New York, California, and Georgia are among the states that have changed their laws to allow entities engaged in private label credit cards to claim tax exemptions previously reserved for in-house credit accounts written off as bad debts.

III. Effect of Proposed Changes:

SB 982 provides for either a sales tax refund or sales tax credit on the unpaid balance of private label and co-branded credit cards that have been written off as uncollectible bad debts for federal

¹ See definition at www.creditorweb.com. Site last visited March 5, 2007.

² Abstract of “U.S. Private Label and Store Credit Card Market Update” at www.mercatoradvisorygroup.com. Site last visited March 6, 2007.

³ Ibid.

⁴ Abstract of “The U.S Market for Private Label Credit Cards, 5th Edition” at www.marketresearch.com. Site last visited March 5, 2007.

⁵ “There’s More ‘BI’ Behind Your Credit Cards Than Customer Loyalty” by Rob Paller, Consultant, of Baseline Consulting. Article at www.baseline-consulting.com. Site last visited March 6, 2007.

⁶ Conversation with Cass Vickers, representing Macy’s Federated Stores, on March 5, 2007.

income tax purposes. The refunds and credits include both Florida sales taxes and local-option sales surtaxes.

The bill also includes co-branded credit cards in its definition of “private label credit cards.”

Section 1 amends s. 212.17, F.S., to allow dealers (retailers and other businesses) or lenders to take a sales tax credit or obtain a sales tax refund on the taxes previously paid on the unpaid balance of private label credit card accounts. A dealer or lender must file appropriate paperwork and meet the following conditions:

- No credit or refund was previously claimed or allowed on any portion of the worthless accounts.
- The accounts are determined to be worthless and are deductible as a bad debt for federal income tax purposes by the lender or any entity affiliated with the lender under 26 U.S.C. s. 1504.
- The accounts are found to be worthless on or after July 1, 2007, and the credit or refund is claimed no later than 12 months following the filing date of the federal income tax return on which the accounts were deducted.

SB 982 also specifies the process by which a dealer or lender who thereafter collects all or part of a worthless account on which a sales tax refund or credit was claimed notifies DOR and corrects the earlier claim.

The term “lender” is defined in the bill as any person who either:

- Owns or has owned a private label credit card account that the person purchased directly from a dealer who remitted the tax imposed under ch. 212, F.S.;
- Owns or has owned a private label credit card account pursuant to a contract directly with the dealer who remitted the tax imposed under ch. 212, F.S.; or
- Is an affiliated entity, under 26 U.S.C. s. 1504, of a person described in subparagraphs 1. or 2., or an assignee or transferee of a person described in subparagraphs 1. or 2.

The term “private label credit card” is defined to mean any charge card or credit card that carries, refers to, or is branded with the name or logo of a dealer and which can be used for purchases from the named dealer, from the dealer’s affiliates under 26 U.S.C. s. 1504, or from persons unrelated to the dealer or the dealer’s affiliates. In the latter circumstance, the sales receipts of the dealer and the dealer’s affiliates must be identified separately from the receipts reflecting sales made by the unrelated persons, which is the practice of co-branded credit cards. These unrelated persons are not eligible for sales tax refunds or credits on the written-off portion of their sales.

SB 982 also establishes a process by which the eligible dealer or lender can obtain a sales tax credit or refund. Briefly:

- The dealer and lender must sign and file a joint election with DOR designating which of them is entitled to claim the tax credit or refund. This election may be revoked following submittal of a signed statement with DOR.
- The dealer and lender must maintain adequate records and other documentation supporting the deduction taken for the charged-off bad debts for which the sales tax credit or refund was taken.
- If a dealer remits sales tax or use tax to Florida and one or more other states, the dealer or lender may use an apportionment method to substantiate the amount of tax imposed under ch. 212, F.S. included in the charged-off debt for which the sales tax refund or credit was applied. The apportionment method must use the dealer's Florida and non-Florida sales, the dealer's taxable and non-taxable sales, and the amount of tax the dealer remitted to the state of Florida. Upon agreement by DOR, the dealer or lender may use an alternative methodology that incorporates a sampling of his or her sales records.
- The lender may have its credit for bad debts claimed on a consolidated sales and use tax return.

This new tax credit/tax refund does not apply to existing provisions in s. 212.17(2), F.S., related to sales of tangible personal property by dealers who retain some form of title to the item, or to s. 212.17(3), F.S., related to the write-off of worthless in-house accounts held by dealers.

SB 982 also authorizes DOR to adopt rules to help implement this law change.

Section 2 provides an effective date of July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

On March 2, 2007, the Revenue Estimating Conference determined by consensus that SB 982 would have an estimated fiscal impact of \$7.3 million in lost state sales tax revenue and \$1.6 million in lost local sales tax-related revenues in fiscal year 2007-2008. The

revenue losses in the following 3 fiscal years were estimated in the \$8 million to \$8.9 million range for the state and \$1.9 million to \$2 million for local governments.

B. Private Sector Impact:

Businesses and financial institutions that already offer private label credit cards, or plan to enter that market, will benefit from the sales tax credits and refunds they would receive if this bill becomes law.

C. Government Sector Impact:

The state and the local governments would receive less sales tax revenue than anticipated, if this bill becomes law.

VI. Technical Deficiencies:

DOR identified a timing provision in SB 982 that conflicts with current law involving federal tax write-offs of bad debts.

Currently, dealers under s. 212.17(3), F.S., can claim a sales tax refund or sales tax credit on bad debts within 12 months following the date on which they were charged off for federal income tax purposes. Under the bill, dealers or lenders with worthless private label credit card accounts could claim a sales tax exemption or sales tax refund no later than 12 months following the filing date of the federal income tax return on which the bad debts were deducted.

According to DOR, using the filing date of the federal income tax return to calculate the period in which the refund or credit can be claimed could stretch beyond 12 months, because a dealer or lender could file for extensions or amendments to his or her federal income tax return.

VII. Related Issues:

None.

VIII. Summary of Amendments:

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