



# John Nygren

WISCONSIN STATE REPRESENTATIVE ★ 89<sup>TH</sup> ASSEMBLY DISTRICT  
Co-Chair, Joint Committee on Finance

**Assembly Bill 644 – Bad Debt**  
**Assembly Committee on Ways and Means**  
**Testimony by State Rep. John Nygren**  
**January 23, 2014**

Thank you, Chairman Marklein and members of the Committee on Ways and Means for holding a public hearing on Assembly Bill 644 today.

Currently, in Wisconsin, retailers are permitted to seek a refund of sales tax when a purchaser defaults in making payments and the account is written off as bad debt. In order to seek a refund, the claimant must be the one who actually sold the product, and they must be able to charge off the bad debt.

An increasing number of retailers are using a third party lender or a “private label card” to issue and administer credit cards for their store. Under current law, the retailers with a private label credit card are not able to claim a sales tax deduction because they do not meet the requirements.

Assembly Bill 644 would address this inequity by enabling a lender who extends credit through a private label credit card to enter into an agreement with a seller so that the seller, the lender, or the lender’s affiliate may claim a deduction or a refund for bad debt. This bill will only apply to purchases made from the retailer who issued the private label credit card and not to general issued credit cards.

In closing, Assembly Bill 644 will help ensure that retail businesses are not “paying” a customer’s taxes on merchandise for which payment was not received. This measure is necessary in order to modernize business practices by clarifying that Wisconsin’s bad debt sales tax deduction applies to retailers who partner with a third-party lender for consumer credit.

The Senate companion bill passed out of committee with a 5-0 vote.

I appreciate the opportunity to testify before your committee today and welcome any questions you may have at this time.



*Scott Walker*  
Governor

*Richard G. Chandler*  
Secretary of Revenue

January 23, 2014

**DOR Testimony on Assembly Bill 644  
Assembly Committee on Ways and Means**

Chairman Marklein and committee members, thank you for the opportunity to present testimony on Assembly Bill (AB) 644.

Currently, Wisconsin law allows a retailer to claim a sales tax deduction for the amount of sales tax associated with sales that the retailer writes off as uncollectible ("bad debts"). A retailer may take a deduction for bad debts previously reported as taxable sales if (1) the retailer previously paid the sales tax; and (2) the retailer may claim a bad debt deduction for federal income tax purposes.

A refund is allowed if the bad debt deduction exceeds the taxes paid on sales reported on the returns. If there is a subsequent recovery of the bad debt deducted, the recovery is reported as income/taxable sale for income and sales and use tax purposes.

DOR administration of the sales tax deduction for bad debt in current law is able to be precisely calculated because bad debt deductions or refunds under current law are linked to debt that is directly associated with a taxable sale, for which the tax was paid to the State of Wisconsin.

AB 644 would allow third party lenders (or their affiliates) who manage a credit card program for a retailer to enter into an agreement with that retailer and claim the refund of sales tax previously paid on sales they determine are uncollectible. The bill would apply for private label credit cards (for use only at a specific retailer), dual purpose credit cards (branded for a specific retailer, but able to be used as a general credit card), and dealer credit programs (credit arrangements for specific purchases, except items for which a title is required such as motor vehicles, aircraft, and motor homes.) There are currently five major lenders of private label credit cards serving thousands of retailers. These entities are in the practice of issuing this debt and assuming the risks associated with it. It is these third parties that would be the largest direct beneficiaries of this bill.

DOR has the following issues for consideration on this bill:

- Four states statutorily allow a bad debt deduction and/or refund to either Retailer or Lender for private label credit card bad debts: California, Texas, Michigan and Pennsylvania.
- Calculating a bad debt sales tax deduction for retailers under current law is able to be precisely linked to sales that a) are taxable sales; b) are sales that took place in Wisconsin. This level of precision is not possible if a third party lender is claiming the bad debt deduction, and possibly receiving a tax refund. DOR's concerns with this approach are that the State may be issuing refunds for sales when no tax was paid to the State, for example if sales were made in other states, or for sales for which an exemption applied.

What bad debts were subject to sales tax, the rate charged, and where the sale originally occurred are all components necessary to precisely determine the appropriate deduction or refund. This level of detail is not maintained by third party lenders.

Under the bill, deductions and refunds would be based on estimates. The amount of the deduction or refund would be determined by one of the following three methodologies, without specifying which one is to be used:

- 1) An apportionment method that estimates the amount of sales or use tax included in the bad debt to which the deduction or refund applies based on the seller's in-state and out-of-state sales, the seller's taxable and nontaxable sales, and the amount of tax the seller remitted to the state.
- 2) A specified percentage of the accounts receivable giving rise to the deduction or based on a sample of the seller's or lender's records in accordance with a methodology agreed on by the department and the seller or lender.
- 3) A "direct method" approved by the department, which is not defined.

DOR believes AB 644 should define the term "direct method" and should specify which method is preferred. Methodologies based on estimates and formulas would be administratively difficult to verify through audit.

- Due to the involvement of multiple entities, DOR would be required to review retailer and third party lender agreements to verify who is entitled to claim the bad debt deduction or refund and to verify the deduction was not claimed improperly by another entity.
- Under this bill, a lender that issues a dual purpose credit card would be able to enter into an agreement with either the specific retailer or an unrelated retailer to claim a bad debt deduction. The potential revenue loss from this bill could be much greater than anticipated if bad debt deductions could be claimed by a lender for sales made by unrelated retailers. DOR believes AB 644 should be revised so that the bad debt deduction cannot be taken by lenders for sales by unrelated retailers.
- Under current law, income tax deductions may only be claimed by the person entitled to the deduction. The proposed sales tax deduction is contrary to tax practices for income tax purposes, which leads to confusion and may result in compliance issues.

Thank you for the opportunity to comment on AB 644.

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Co., Inc.  
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JCPenney  
Kohl's  
Macy's  
Sears  
Holdings  
Corporation  
Shopko  
Target  
Wisconsin  
Jewelers  
Association

**To:** Members of the Assembly Committee on Ways and Means  
**From:** Matt Phillips, Alliance of Wisconsin Retailers  
**Date:** January 23, 2014  
**Re:** Support of Assembly Bill 644

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Chairman Marklein, members of the Committee, thank you for holding a hearing today on Assembly Bill 644, relating to sales tax bad debt return adjustments for private label credit cards. I am here on behalf of the Alliance of Wisconsin Retailers, LLC, which is comprised of leading names in the Wisconsin retail industry whose goal is to inform, educate and communicate with state officials on issues of importance to the retail community. Our members are committed to creating and maintaining good paying jobs in Wisconsin, and currently employ over 50,000 Wisconsinites.

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Under current law, sales tax bad debt return adjustments are permitted to allow retailers to recoup sales tax they remit to the state on sales where, after the fact, a consumer defaults on their credit. While many retailers used to be able to claim this deduction, as the desire for consumer credit increased, most retailers now choose to partner with a third-party lender to offer their customers credit through private label credit cards. This effort to modernize business practices created an unintended consequence of eliminating their ability to claim the existing bad debt adjustment.

Assembly Bill 644 looks to update Wisconsin's statutes to clarify this issue, and again allow for the return of uncollected sales taxes when a consumer defaults on their credit. The bill would not apply to general issued credit cards, only to private label credit cards used at the retailer who issued the card.

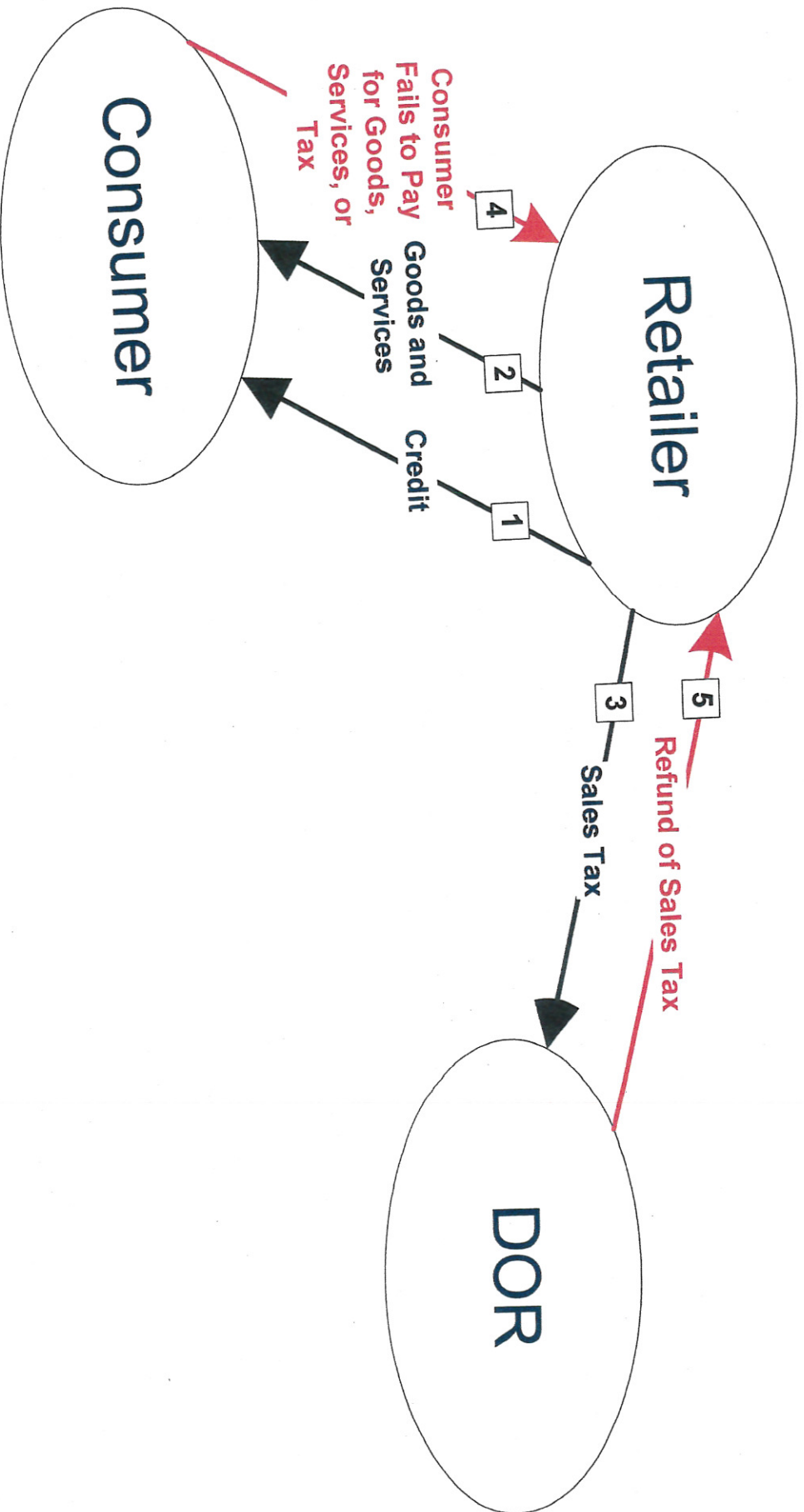
As major employers in Wisconsin, we applaud your efforts to work towards creating more jobs in Wisconsin. By adopting AB 644, you will be helping to improve the business climate for retailers in the state, allowing us to grow our businesses and help facilitate job growth.

Thank you of your consideration of Assembly Bill 644.

# CURRENT LAW

## RETAILER ORIGINATES CREDIT - Consumer Fails to Pay

### Sales Tax Flow



# PROPOSED NEW LAW

## RETAILER CONTRACTS WITH LENDER TO ORIGINATE PLCC - Consumer Fails to Pay

