



Alberta Darling

Wisconsin State Senator
Member, Joint Committee on Finance

Senate Bill 490: Bad Debt Testimony

Thank you Senator Tiffany and committee members.

Wisconsin law is still based on the times when retailers played “banker” with their own credit cards. As the retail market became more competitive, retailers realized they needed to focus on what they did best – sell products. Many retailers decided to use third party lenders to issue and administer credit cards.

Currently, when a sales transaction is completed using the seller’s own credit accounts, the law allows for a credit or refund of the sales tax remitted on a sales transaction when the purchaser defaults in making payments on such account and the account is written off as a bad debt. In other words, when a customer does not pay for merchandise received, the retailer gets back the sales tax that has been sent to the state in advance.

Today, the majority of retailers have credit cards bearing their brand names – however, the credit cards are actually issued by third-party lenders and are known as “private label cards.” Under the current sales tax law this type of credit card is not eligible for a refund or credit of previously collected sales tax because of a technicality -- the third-party lender did not actually make the retail sale.

Senate Bill 490 would permit a retailer or a private label lender to obtain a credit or refund of sales tax previously remitted when a “private label card” is written off as a bad debt. Amending the current sales tax law would ensure that retail businesses are not “paying” a customer’s taxes on merchandise for which payment was not received.

It’s important to note that this bill only applies to purchases made from the retailer who issued the private label credit card. It will not apply to general issued credit cards like a regular Visa card.

Thank you for the opportunity to testify on Senate Bill 490, I’d be happy to answer any questions committee members may have.



Scott Walker
Governor

Richard G. Chandler
Secretary of Revenue

January 15, 2013

DOR Testimony on Senate Bill 490
Senate Committee on Workforce Development, Forestry, Mining, and Revenue

Chairman Tiffany and members of the Senate Committee on Workforce Development, Forestry, Mining, and Revenue, thank you for the opportunity to present testimony on Senate Bill 490.

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.

SB 490 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 SB 490 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 SB 490 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 SB 490.



To: Members of the Senate Committee on Workforce Development,
Forestry, Mining and Revenue

From: Scott Stenger, Alliance of Wisconsin Retailers

Date: January 15, 2014

Re: Support of Senate Bill 490

Best Buy
Co., Inc.
Blain's Farm
& Fleet
Home Depot
JCPenney
Kohl's
Macy's
Sears
Holdings
Corporation
Shopko
Target
Wisconsin
Jewelers
Association

Chairman Tiffany, members of the Committee, thank you for holding a hearing today on Senate Bill 490, 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.

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.

Senate Bill 490 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 SB 490, 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 Senate Bill 490.