



2013 SENATE BILL 490

January 10, 2014 – Introduced by Senator DARLING, cosponsored by Representative NYGREN. Referred to Committee on Workforce Development, Forestry, Mining, and Revenue.

- 1 **AN ACT** *to create* 77.585 (11) of the statutes; **relating to:** sales tax bad debt
2 return adjustments for private label credit card bad debt.

Analysis by the Legislative Reference Bureau

Under current law, for sales tax purposes, a seller may claim on a sales tax return a deduction for the amount of any bad debt that the seller writes off as uncollectible in the seller's books and records, if the amount may be deducted as bad debt for federal income tax purposes, regardless of whether the seller must file a federal income tax return.

Under this bill, a lender who extends credit through a private label credit card, dual purpose credit card, or dealer credit program, may 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. A private label credit card is any credit card that identifies a seller's name or logo on the card and that may be used only for purchases from that seller or from any of the seller's affiliates or franchisees. A dual purpose credit card is a credit card that may be used as a private label credit card or to make purchases from persons other than the seller whose name or logo appears on the card. A dealer credit program is an arrangement for extending credit for a specific purchase from a seller.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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1 **SECTION 1.** 77.585 (11) of the statutes is created to read:

2 77.585 (11) (a) In this subsection:

3 1. “Dealer credit program” means an arrangement for extending credit for a
4 specific purchase from a seller, not including the purchase of an aircraft, a motor
5 vehicle, a vessel, a motor home, or any other item for which a title is required.

6 2. “Dual purpose credit card” means a credit card that may be used as a private
7 label credit card or to make purchases from persons other than the seller whose name
8 or logo appears on the card or the seller’s affiliates or franchisees, if the credit card
9 issuer is able to determine the sales receipts of the seller and the seller’s affiliates
10 or franchisees apart from any sales receipts of unrelated persons.

11 3. a. “Lender” means any person who owns a private label credit card account,
12 a dual purpose credit card account, or a dealer credit program account, or an interest
13 in a receivable from any such account, if the person purchased the account or interest
14 directly from a seller who remitted the sales or use tax or from the seller’s affiliate,
15 the person received the account or interest from a third party, or the person
16 originated the account or interest pursuant to the person’s contract with the seller
17 who remitted the sales or use tax or with the seller’s affiliate.

18 b. “Lender” includes any person who is a member of the same affiliated group,
19 as defined under section 1504 of the Internal Revenue Code, as a lender described
20 under subd. 3. a. or is an assignee or other transferee of a lender described under
21 subd. 3. a.

22 4. “Private label credit card” means any charge card or credit card that
23 identifies a seller’s name or logo on the card and that may be used only for purchases
24 from that seller or from any of the seller’s affiliates or franchisees.

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1 5. “Seller’s affiliate” means any entity that is a member of the same affiliated
2 group, as defined under section 1504 of the Internal Revenue Code, as the seller that
3 may file a single consolidated return for federal income tax purposes.

4 (b) A lender who extends credit through a private label credit card, dual
5 purpose credit card, or dealer credit program, may enter into an agreement with a
6 seller so that the seller, the lender, or an affiliate of the lender may claim a deduction
7 or a refund for bad debt under sub. (1) if all of the following apply:

8 1. The seller previously reported and paid the tax due related to the bad debt.

9 2. No deduction or refund was previously claimed by, or allowed to, either the
10 seller or the lender on the bad debt.

11 3. The amount for which the seller or lender claims a deduction or refund under
12 sub. (1) is limited to credit sale transactions included in the account or receivable that
13 is charged off on the lender’s books and records after December 31, 2013, regardless
14 of the date on which the credit sale transaction occurred.

15 4. The seller and lender designate which party is entitled to claim the deduction
16 or refund, specify that designation in the written agreement between the seller and
17 the lender, and make the agreement available for review by the department. The
18 written agreement shall also provide that if the party that is entitled to claim the
19 deduction or refund is no longer in business, the other party may claim the deduction
20 or refund.

21 (c) A seller or lender who claims a deduction or a refund as provided under this
22 subsection shall maintain adequate books, records, or other documents to support
23 the deduction or refund. A seller or lender shall use one of the following methods for
24 determining the amount of the deduction or refund:

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1 1. An apportionment method that determines the amount of the sales or use
2 tax included in the bad debt to which the deduction or refund applies using the
3 seller's in-state and out-of-state sales, the seller's taxable and nontaxable sales,
4 and the amount of the tax the seller remitted to the state.

5 2. A specified percentage of the accounts or receivables giving rise to the
6 deduction or refund, if the specified percentage is derived from a sampling of the
7 seller's or lender's records, as appropriate, in accordance with a methodology agreed
8 on by the department and the seller or lender, as appropriate. For purposes of this
9 subdivision, in order to compute the deduction or refund, payments on the accounts
10 or receivables shall be allocated based on the terms and conditions of the contract
11 between the seller or lender and the consumer.

12 3. A direct method approved by the department.

13 (d) A seller or lender who claims a deduction or refund as provided under this
14 subsection and who subsequently collects, in whole or in part, any amount for which
15 the deduction or refund was claimed, shall include the taxable percentage of the
16 amount collected and pay the tax on the return filed for the period corresponding to
17 the date when the amount is collected.

18 (e) A seller's or lender's deduction for tax paid on bad debt may be claimed by
19 an entity related to the seller or lender if the entity is related by a direct or indirect
20 common ownership of 50 percent or more.

21 **SECTION 2. Initial applicability.**

22 (1) This act first applies to taxable years beginning on January 1, 2014.

23 **(END)**