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**SENATE BILL 5910**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Wilson, Keiser, Honeyford, Conway, Hunt, and Rossi

AN ACT Relating to the sales tax credit or refund for amounts charged off as bad debts with respect to private label credit accounts; amending RCW 82.08.037; and creating new sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  (1) This section is the tax preference performance statement for the tax preference in section 2 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to accomplish a general purpose as indicated in RCW 82.32.808(2)(f).

(3) It is the legislature's specific public policy objective to fix a current inequity in Washington state law. The sales tax is imposed on the customer; the retailer is only supposed to collect the tax from the customer and remit it to the state. Under current law, if a customer who uses a credit card owned by the retailer fails to pay their bill, the retailer is entitled to a credit or refund of the sales tax. However, if that same customer uses a private label credit card, neither the retailer nor the private label credit card company is entitled to a credit or refund of the tax. The legislature finds that this unfairly makes the retailer and/or private label credit card company the guarantor of the public's tax responsibility.

(4) To measure the effectiveness of the exemption provided in this act in achieving the specific public policy objective described in subsection (3) of this section, the joint legislative audit and review committee must evaluate this tax preference. In order to obtain the data necessary to perform the evaluation in this subsection, the joint legislative audit and review committee may refer to data provided to the department of revenue.

**Sec.**  RCW 82.08.037 and 2010 1st sp.s. c 23 s 1502 are each amended to read as follows:

(1) A seller is entitled to a credit or refund for sales taxes previously paid on bad debts, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003.

(2) For purposes of this section, "bad debts" does not include:

(a) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;

(b) Expenses incurred in attempting to collect debt;

(c) Except as provided in subsection (8) of this section, debts sold or assigned by the seller to third parties, where the third party is without recourse against the seller; and

(d) Repossessed property.

(3) If a credit or refund of sales tax is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount collected must be paid and reported on the return filed for the period in which the collection is made.

(4) Payments on a previously claimed bad debt are applied first proportionally to the taxable price of the property or service and the sales or use tax thereon, and secondly to interest, service charges, and any other charges.

(5) If the seller uses a certified service provider as defined in RCW 82.32.020 to administer its sales tax responsibilities, the certified service provider may claim, on behalf of the seller, the credit or refund allowed by this section. The certified service provider must credit or refund the full amount received to the seller.

(6) The department must allow an allocation of bad debts among ((~~member states to the streamlined sales tax agreement, as defined in RCW 82.58.010(1)~~)) states, if the books and records of the person claiming bad debts support the allocation.

(7) A person's right to claim a credit or refund under this section is not assignable. No person other than the original seller in the transaction that generated the bad debt or, as provided in subsection (5) of this section, a certified service provider, is entitled to claim a credit or refund under this section. If the original seller in the transaction that generated the bad debt has sold or assigned the debt instrument to a third party with recourse, the original seller may claim a credit or refund under this section only after the debt instrument is reassigned by the third party to the original seller.

(8) Notwithstanding the other provisions of this section, the following applies for amounts charged off with respect to private label credit accounts:

(a) A seller may claim a credit or refund of the tax previously reported by the seller on the unpaid balance due on the accounts or receivables that are charged off as a bad debt on the books and records of the lender, and the accounts or receivables have been charged off as bad debts on the lender's books and records on or after July 1, 2017.

(b) The credit or refund for the accounts or receivables must include all credit sale transaction amounts outstanding in the account or receivable at the time the account or receivable is charged off, regardless of the date on which the credit sale transaction actually occurred.

(c) For purposes of this subsection (8):

(i) "Bad debt" means amounts due on the accounts or receivables that are charged off on the books and records of the lender;

(ii) "Lender" means a person or an affiliate, assignee, or transferee of a person, that owns a private label credit account, or an interest in a private label credit account receivable, provided that interest was any of the following:

(A) Transferred from a third party;

(B) Purchased directly from a seller that remitted tax imposed under this chapter or from an affiliate of the seller; or

(C) Originated according to a written agreement between the person and a seller that remitted tax imposed under this chapter or an affiliate of the seller; and

(iii) "Private label credit account" means a credit account or credit card that carries, refers to, or is branded with the name or logo of a seller, and can be used for purchases from the seller whose name or logo appears on the card or account, or for purchases from any of the seller's affiliates. This subsection does not authorize any credit or refund with respect to sales by any person other than the seller whose name or logo appears on the card or account, or any of the seller's affiliates.

(d) If a seller claims a credit or refund of sales tax under this subsection (8) and the seller or the lender subsequently collects all or part of the bad debt, then the seller must pay the tax on the amount collected in accordance with subsection (3) of this section.

NEW SECTION. **Sec.**  Section 2 of this act is exempt from the automatic expiration date provisions of RCW 82.32.805(1)(a).

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