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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

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

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

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

11 (2) The legislature categorizes this tax preference as one  
12 intended to accomplish a general purpose as indicated in RCW  
13 82.32.808(2)(f).

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

1 is entitled to a credit or refund of the tax. The legislature finds  
2 that this unfairly makes the retailer and/or private label credit  
3 card company the guarantor of the public's tax responsibility.

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

11 **Sec. 2.** RCW 82.08.037 and 2010 1st sp.s. c 23 s 1502 are each  
12 amended to read as follows:

13 (1) A seller is entitled to a credit or refund for sales taxes  
14 previously paid on bad debts, as that term is used in 26 U.S.C. Sec.  
15 166, as amended or renumbered as of January 1, 2003.

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

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

19 (b) Expenses incurred in attempting to collect debt;

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

23 (d) Repossessed property.

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

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

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

38 (6) The department must allow an allocation of bad debts among  
39 (~~member states to the streamlined sales tax agreement, as defined in~~

1 ~~RCW 82.58.010(1)~~) states, if the books and records of the person  
2 claiming bad debts support the allocation.

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

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

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

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

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

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

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

34 (A) Transferred from a third party;

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

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

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

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

13        NEW SECTION. Sec. 3. Section 2 of this act is exempt from the  
14 automatic expiration date provisions of RCW 82.32.805(1)(a).

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