

House Bill 1054

By: Representative Williams of the 4<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Part 2 of Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia  
2 Annotated, relating to the imposition, rate, collection, and assessment of sales and use taxes,  
3 so as to provide requirements and procedures for deductions or refunds as to amounts to be  
4 charged off of private label credit card or dealer credit programs; to provide for related  
5 matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Part 2 of Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated,  
9 relating to the imposition, rate, collection, and assessment of sales and use taxes, is amended  
10 by revising Code Section 48-8-45, relating to reporting cash and credit sales, change of basis  
11 of accounting, payment of tax at time of filing return under cash basis of accounting,  
12 deduction of bad debts under accrual basis of accounting, availability of refund, bad debt  
13 deduction or refund nonassignability, and allocation of bad debts, as follows:

14 "48-8-45.

15 (a) Any dealer taxable under this article having both cash and credit sales may report the  
16 sales on either the cash or accrual basis of accounting. Each election of a basis of  
17 accounting shall be made on the first return filed and, once made, the election shall be  
18 irrevocable unless the commissioner grants written permission for a change. Permission  
19 for a change in the basis of accounting shall be granted only upon written application and  
20 under rules and regulations promulgated by the commissioner.

21 (b) Any dealer reporting on a cash basis of accounting shall include in each return all cash  
22 sales made during the period covered by the return and all collections made in any period  
23 on credit sales of prior periods and shall pay the tax on the sales at the time of filing the  
24 return.

25 (c) Any dealer reporting on the accrual basis of accounting shall be allowed a deduction  
26 for bad debts under rules and regulations of the commissioner. Any deduction taken or  
27 refund claimed that is attributed to bad debts shall not accrue or include interest.

28 (d)(1) For purposes of this subsection, the term:

29 (A) 'Bad debt' means any amount due on the accounts or receivables that are charged  
30 off on the books and records of the lender.

31 (B) 'Dealer credit' means an arrangement where credit is extended for a specific  
32 purchase from a dealer.

33 (C) 'Lender' means any person who owns:

34 (i) A private label credit card account or a dealer credit account; or

35 (ii) An interest in a private label credit card receivable or dealer credit receivable:

36 (I) Purchased directly from a dealer or its affiliates who remitted the tax imposed  
37 under this chapter or purchased from a third party;

38 (II) Originated pursuant to such person's program agreement or other contractual  
39 arrangement with the dealer or its affiliates who remitted the tax imposed under this  
40 chapter; or

41 (III) Affiliated in the manner described in 26 U.S.C. Section 1504, regardless of  
42 whether the different entities are corporations, to a person described in  
43 subdivision (I) or (II) of this division or an assignee or other transferee of a person  
44 described in subdivision (I) or (II) of this division.

45 (D) 'Private label credit card' means any charge card or credit card that carries, refers  
46 to, or is branded with the name or logo of a dealer and can be used for purchases from  
47 the dealer whose name or logo appears on the card or for purchases from any of the  
48 dealer's affiliates or franchisees.

49 (2) Notwithstanding subsection (g) or any other provisions of this Code section, the  
50 following shall apply for amounts charged off of private label credit card or dealer credit  
51 programs:

52 (A) A dealer or lender may claim a deduction on a return or obtain a refund of the tax  
53 previously reported by the dealer on the unpaid balance due on the accounts or  
54 receivables that are charged off as a bad debt on the books and records of the lender and  
55 that are eligible to be deducted for federal income tax purposes, provided that an  
56 election under subparagraph (C) of this paragraph is made by the dealer or lender and  
57 the following conditions are met:

58 (i) The accounts or receivables have been charged off as bad debts on the lender's  
59 books and records; and

60 (ii) The accounts or receivables are charged off on or after January 1, 2012;

61 (B) The deduction or refund for the accounts or receivables shall include all credit sale  
62 transaction amounts outstanding in the account or receivables at the time the account  
63 or receivables are charged off, regardless of the date on which the credit sale transaction  
64 actually occurred;

65 (C) The dealer and the lender must execute a joint election, signed by both parties,  
66 designating which party is entitled to claim the deduction or refund under this  
67 subsection. This document shall be retained by the party claiming the deduction or  
68 refund and shall be available for review by the department. This election may not be  
69 amended or revoked unless a new election is signed by both parties. In the event the  
70 party electing to claim the deduction or refund is no longer in business, then the other  
71 party shall be entitled to claim the deduction or refund without any further election;

72 (D) A dealer or lender may have its deduction or refund for bad debts claimed on any  
73 return filed by a member of the affiliated group as defined under 26 U.S.C. Section  
74 1504 on whose return the charged-off amounts will be claimed as a deduction or a  
75 person affiliated to such members in the manner described in 26 U.S.C. Section 1504  
76 regardless of whether the different entities are corporations;

77 (E) The dealer or a lender shall maintain adequate books, records, or other  
78 documentation supporting the charge off of the accounts for which a deduction was  
79 taken or a refund was claimed under this subsection. If a dealer remits sales or use tax  
80 to this state and one or more other states, the claimant under this subsection may use  
81 an apportionment method to substantiate the amount of tax imposed under this chapter  
82 included in the bad debts to which the deduction or refund applies. The apportionment  
83 method must use the dealer's Georgia and non-Georgia sales, the dealer's taxable and  
84 nontaxable sales, and the amount of tax the dealer remitted to this state. Alternatively,  
85 the claimant under this subsection may treat a specified percentage of the private label  
86 credit card accounts as giving rise to a deduction or refund under this subsection so long  
87 as the percentage is derived from a sampling of the dealer's or lender's records in  
88 accordance with a methodology agreed upon by the department and the claimant. For  
89 purpose of computing the deduction or refund, payments on the accounts shall be  
90 allocated based on the terms and conditions of the agreement between the dealer or  
91 lender and the customer;

92 (F) If the lender has provided the name, address, and dealer's certificate number of the  
93 dealer responsible for paying the tax, in determining whether to grant the lender's claim  
94 for deduction or refund, the department shall regard the dealer as having paid the  
95 applicable tax due unless the department establishes otherwise;

96 (G) If the dealer or lender thereafter collects in whole or in part on any accounts or  
 97 receivables with respect to which a deduction or refund is granted, one of the following  
 98 shall apply:

99 (i) If the dealer is entitled to the deduction or refund under the election specified in  
 100 subparagraph (C) of this paragraph, the dealer shall include the amount collected in  
 101 its first return filed after the collection and pay tax on the portion of that amount with  
 102 respect to which a deduction or refund was granted, as calculated under  
 103 subparagraph (E) of this paragraph, with the return; or

104 (ii) If the lender is entitled to the deduction or refund under the election specified in  
 105 subparagraph (C) of this paragraph, the lender shall pay the tax, as calculated under  
 106 division (i) of this subparagraph, to the department in the same manner as provided  
 107 for dealers in subsection (a) of Code Section 48-8-49; and

108 (H) In the case of a private label credit card that also may be used to make purchases  
 109 from persons other than the dealer whose name or logo appears on the card or the dealer's  
 110 affiliates or franchisees:

111 (i) The sales receipts of the dealer and the dealer's affiliates or franchisees must be  
 112 capable of identification apart from any receipts reflecting sales by such unrelated  
 113 person; and

114 (ii) No credit or refund for sales made by such unrelated persons shall be authorized  
 115 under any provision of this subsection.

116 ~~(d)~~(e) The bad debt may be deducted on the return for the period during which the bad  
 117 debt is written off as uncollectable in the claimant's books and records and is eligible to be  
 118 deducted for federal income tax purposes. Any such deduction for such bad debt shall be  
 119 reported as a separate line item on the claimant's sales and use tax return. If such deduction  
 120 is not reported as a line item, it shall be disallowed. A claimant who is not required to file  
 121 federal income tax returns may deduct a bad debt on a return filed for the period in which  
 122 the bad debt is written off as uncollectable in the claimant's books and records and the  
 123 claimant would be eligible for a bad debt deduction for federal income tax purposes if the  
 124 claimant was required to file a federal income tax return.

125 ~~(e)~~(f) If a deduction is taken for a bad debt and the debt is subsequently collected in whole  
 126 or in part, the tax on the amount so collected must be paid and reported on the return filed  
 127 for the period in which the collection is made. For the purposes of reporting a payment  
 128 received on a previously claimed bad debt, any payments made on a debt or account are  
 129 applied first proportionally to the taxable price of the property or service and the sales tax  
 130 thereon, and, secondly, to interest, service charges, and any other charges.

131 ~~(f)~~(g)(1) As used in this subsection, 'assignee' includes but is not limited to:

132 (A) Assignees of promissory notes, accounts, or accounts receivable; or

133 (B) Financial institutions that do not make taxable retail sales but that finance retail  
134 sales by making loans or issuing credit cards to purchasers.

135 (2) The deduction and refund provided for in this Code section are not assignable. The  
136 deduction and refund provided for in this Code section are only available to a dealer that  
137 makes a taxable retail sale, remits tax on that sale, and subsequently incurs a bad debt  
138 with respect to that sale. Assignees may not take a deduction or claim a refund pursuant  
139 to this Code section.

140 (3) This subsection shall not be applicable to amounts charged off with respect to private  
141 label credit cards or dealer credit programs as provided for in subsection (d) of this Code  
142 section.

143 ~~(g)~~(h) For purposes of calculating the deduction taken or refund claimed, a 'bad debt' shall  
144 have the same meaning as defined in 26 U.S.C. Section 166. However, the amount  
145 calculated pursuant to 26 U.S.C. Section 166 shall be adjusted to exclude:

- 146 (1) Financing charges or interest;
- 147 (2) Sales or use taxes charged on the purchase price;
- 148 (3) Uncollectable amounts on property that remain in the possession of the seller until  
149 the full purchase price is paid;
- 150 (4) Expenses incurred in attempting to collect any debt; and
- 151 (5) Repossessed property.

152 ~~(h)~~(i) For bad debts incurred and written off after January 1, 2011, when the amount of bad  
153 debt exceeds the amount of taxable sales for the period during which the bad debt is written  
154 off, a refund claim may be filed. The statute of limitations for filing such claim shall be  
155 three years from the due date of the return on which the bad debt could first be claimed.  
156 Such refund shall be claimed on such form as shall be established by the commissioner.

157 ~~(i)~~(j) Where filing responsibilities have been assumed by a certified service provider, the  
158 department allows the service provider to claim, on behalf of the seller, any bad debt  
159 allowance provided by this Code section. Such refund shall be claimed on such form as  
160 shall be established by the commissioner. The certified service provider must credit or  
161 refund the full amount of any bad debt allowance or refund received to the seller.

162 ~~(j)~~(k) Where the books and records of the party claiming the bad debt allowance support  
163 an allocation of the bad debts among the Streamlined Sales Tax member states, such  
164 allocation is permitted."

## 165 SECTION 2.

166 All laws and parts of laws in conflict with this Act are repealed.