

House Bill 307

By: Representatives Peake of the 141st, Stephens of the 164th, and Powell of the 171st

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 imposition, rate, collection, and assessment of state income taxes, so
3 as to provide for credits for bad debts on private label credit cards or dealer credit programs;
4 to provide for conditions, limitations, and procedures; to provide for related matters; to
5 provide for an effective date and applicability; to repeal conflicting laws; and for other
6 purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 style="text-align:center">**SECTION 1.**

9 Part 2 of Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated,
10 relating to imposition, rate, collection, and assessment of state income taxes, is amended by
11 revising Code Section 48-8-45, relating to reporting of cash and credit sales, change of basis
12 of accounting, payment of tax at time of filing return under cash basis of accounting, and
13 deduction of bad debts under accrual basis of accounting, 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 amounts due on the accounts or receivables that are charged off
30 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 a private label credit card account or a dealer
34 credit account, or an interest in a private label credit card receivable or dealer credit
35 receivable:

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

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

41 (iii) That is affiliated in the manner described in 26 U.S.C. Section 1504, regardless
42 of whether the different entities are corporations, to a person described in division (i)
43 or (ii) of this subparagraph, or an assignee or other transferee of a person described
44 in division (i) or (ii) of this subparagraph.

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 any other provision of this Code section, the following provisions
50 shall apply to amounts charged off with respect to private label credit card or dealer credit
51 programs:

52 (A) In the case of a private label credit card that also may be used to make purchases
53 from persons other than the dealer whose name or logo appears on the card or the
54 dealer's affiliates or franchisees, the sales receipts of the dealer and the dealer's affiliates
55 or franchisees shall be capable of identification apart from any receipts reflecting sales
56 by such unrelated persons. This subsection shall not authorize any credit or refund with
57 respect to sales by such unrelated persons;

58 (B) A dealer or lender may claim a deduction on a return, or obtain a refund, of the tax
59 previously reported by the dealer on the unpaid balance due on the accounts or
60 receivables that are charged off as a bad debt on the books and records of the lender,

61 provided that an election under subparagraph (D) of this paragraph is made by the
62 dealer and lender, and the following conditions are met:

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

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

66 (C) The deduction or refund for the accounts or receivables shall include all credit sale
67 transaction amounts outstanding in the account or receivable at the time the account or
68 receivable is charged off, regardless of the date on which the credit sale transaction
69 actually occurred;

70 (D) The dealer and the lender shall execute an election designating which party is
71 entitled to claim the deduction or refund under this subsection. Such election shall be
72 documented in the program agreement between the lender and the dealer or other
73 written agreement between the parties and shall be available for review by the
74 department. In the event the party eligible to claim the deduction or refund is no longer
75 in business, then the other party shall be entitled to claim the deduction or refund
76 without any further election;

77 (E) A dealer or lender may have its deduction or refund for bad debts claimed on any
78 return filed by a related entity having common ownership of at least 50 percent;

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

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

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

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

106 (ii) If the lender is entitled to the deduction or refund under the election specified in
 107 subparagraph (D) of this paragraph, the lender shall pay the tax, as calculated under
 108 subparagraph (F) of this paragraph, to the department in the same manner as provided
 109 for dealers in subsection (a) of Code Section 48-8-49.

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

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

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

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

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

129 (2) The deduction and refund provided for in this Code section ~~are~~ shall not be
 130 assignable. The deduction and refund provided for in this Code section ~~are~~ shall only be
 131 available to a dealer that makes a taxable retail sale, remits tax on that sale, and
 132 subsequently incurs a bad debt with respect to that sale. Assignees may not take a
 133 deduction or claim a refund pursuant to this Code section.

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

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

- 140 (1) Financing charges or interest;
- 141 (2) Sales or use taxes charged on the purchase price;
- 142 (3) Uncollectable amounts on property that remain in the possession of the seller until
 143 the full purchase price is paid;
- 144 (4) Expenses incurred in attempting to collect any debt; and
- 145 (5) Amounts received from the sale of Repossessed property.

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

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

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

159 **SECTION 2.**

160 This Act shall become effective on July 1, 2013 and shall be applicable to all taxable years
 161 beginning on or after January 1, 2014.

162 **SECTION 3.**

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