

House Bill 389

By: Representatives Harrell of the 106th, Abrams of the 89th, Knight of the 130th, Harbin of the 122nd, and Ramsey of the 72nd

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) 'Lender' means any person who owns a private label credit card account or an
30 interest in a private label credit card receivable:

31 (i) That the person purchased directly from a dealer who remitted the tax imposed
32 under this chapter or from the dealer's affiliates, or purchased from a third party;

33 (ii) That the person originated pursuant to such person's program agreement or other
34 contractual arrangement with the dealer who remitted the tax imposed under this
35 chapter or from the dealer's affiliates; or

36 (iii) That is affiliated in the manner described in 26 U.S.C. Section 1504, regardless
37 of whether the different entities are corporations, with a person described in division
38 (i) or (ii) of this subparagraph or an assignee or other transferee of a person described
39 in division (i) or (ii) of this subparagraph.

40 (B) 'Private label credit card' means any charge or credit card or account that carries,
41 refers to, or is branded with the name or logo of a dealer and can be used for purchases
42 from the dealer whose name or logo appears on the card or for purchases from any of
43 the dealer's affiliates or franchisees.

44 (2) Notwithstanding any other provision of this Code section, the following provisions
45 shall apply to amounts charged off with respect to private label credit card programs:

46 (A) A dealer shall be allowed a deduction or refund of the tax previously reported by
47 the dealer on the unpaid balance due on the account or receivable that is charged off as
48 a bad debt on the books and records of the lender;

49 (B) The deduction or refund for the account or receivable shall include all credit sale
50 transaction amounts outstanding in the account or receivable at the time the account or
51 receivable is charged off, provided that the credit sale transactions occurred on or after
52 July 1, 2015;

53 (C) The dealer shall maintain adequate books, records, or other documentation
54 supporting the charge off of the accounts for which a deduction or refund was claimed
55 under this subsection. If a dealer remits sales or use tax to this state and one or more
56 other states, the dealer may use an apportionment method to substantiate the amount of
57 tax imposed under this chapter included in the bad debts to which the deduction or
58 refund applies. The apportionment method shall use the dealer's Georgia and
59 non-Georgia sales, the dealer's taxable and nontaxable sales, and the amount of tax the
60 dealer remitted to this state. Alternatively, the dealer may treat a specified percentage
61 of the private label credit card accounts as giving rise to a deduction or refund under

62 this subsection, which percentage shall be derived from a sampling of the dealer's or
 63 lender's records in accordance with a methodology agreed upon by the commissioner
 64 and the dealer;

65 (D) If the dealer or the lender thereafter collects in whole or in part on any accounts or
 66 receivables with respect to which a deduction or refund is granted, the dealer shall
 67 include the amount collected in its first return filed after the collection and pay tax on
 68 the portion of that amount with respect to which a deduction or refund was granted, in
 69 the manner provided in subsection (f) of this Code section; and

70 (E) This subsection shall not authorize any deduction or refund with respect to sales
 71 by any persons other than the dealer whose name or logo appears on the card or account
 72 or the dealer's affiliates and franchisees.

73 ~~(d)~~(e) Except as provided in subsection (d) of this Code section, the ~~The~~ bad debt may be
 74 deducted on the return for the period during which the bad debt is written off as
 75 uncollectable in the claimant's books and records and is eligible to be deducted for federal
 76 income tax purposes. Any such deduction for such bad debt shall be reported as a separate
 77 line item on the claimant's sales and use tax return. If such deduction is not reported as a
 78 line item, it shall be disallowed. A claimant who is not required to file federal income tax
 79 returns may deduct a bad debt on a return filed for the period in which the bad debt is
 80 written off as uncollectable in the claimant's books and records and the claimant would be
 81 eligible for a bad debt deduction for federal income tax purposes if the claimant was
 82 required to file a federal income tax return.

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

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

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

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

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

